UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America, Plaintiff, v. Tou Thao(2), J. Alexander Kueng(3), and Thomas Kiernan Lane(4), Defendants.	File No. 21-cr-108 (PAM/TNL) Courtroom 7D St. Paul, Minnesota Tuesday, February 1, 2022 9:29 a.m.

BEFORE THE HONORABLE PAUL A. MAGNUSON
UNITED STATES DISTRICT COURT SENIOR JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME IX)

Proceedings recorded by mechanical stenography; transcript produced by computer.

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(9:29 a.m.)

IN OPEN COURT

(JURY PRESENT)

THE COURT: Good morning, everyone.

Mr. Paule, proceed.

MR. ROBERT PAULE: May I inquire, Your Honor?

THE COURT: Proceed.

MR. ROBERT PAULE: Thank you.

ANDREW BAKER,

called on behalf of the government, was previously duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MR. ROBERT PAULE:

Q. Good morning, Dr. Baker.

A. Good morning.

Q. Dr. Baker, you are the chief medical examiner for Hennepin County; is that correct?

A. That is correct.

Q. And can you please tell the jury how long you've held that position?

A. Since 2004.

Q. And how is it that one is chosen to become the chief medical examiner?

A. It is an appointed position. Under Minnesota Statutes Chapter 390 I am appointed by the Hennepin County Board of

Commissioners. That has to be renewed every four years.
Q. And so there's I believe it's a board of seven particular county commissioners that would vote to reappoint you; is that correct?
A. That is correct.
Q. Okay. And how long are your appointments for?
A. Four years.
Q. And when was your most recent appointment?
A. 2020.
Q. Do you remember the exact date?
A. I don't remember the exact date, but it would have been in the early to mid June time frame.
Q. Does June 11th sound approximately right?
A. Could be.
Q. All right. Now, Dr. Baker, just so the jury's aware, the medical examiner is supposed to be a neutral and independent office; is that correct?
A. Not is supposed to be. It is.
Q. It is. Pardon me. It is. Why is that so important?
A. We investigate deaths from a medical point of view, and you would never want that to be influenced by the interests of law enforcement or any prosecutorial agency. So when we say we're independent, we mean they have no role in whether I get appointed or whether I get to keep my job.
Q. Okay. And the idea is, you don't want anyone, really,

influencing your decisions as a public health department correct?

A. Well, certainly not other agencies that we work with, they should not be able to influence my decisions, no.

Q. Okay. Thank you. And, Dr. Baker, can you just give an estimate of how many autopsies you have performed?

A. Probably in the neighborhood of thirty-two, thirty-three hundred.

Q. Okay. And I may be using the term wrong. I think when you testified yesterday, you described autopsy as a sort of a multi-step process, is that correct, or death investigation?

A. So death investigation is the umbrella term for the multi-step process I described yesterday. The autopsy is the actual physical examination of the body by the pathologist.

Q. And that physical examination also includes certain surgical techniques that have to be done to examine the body; is that correct?

A. Yeah. We don't often think of them as surgical techniques, but, yeah, they're the same skills that surgeons would use, oftentimes the same tools.

Q. And okay. And going to the amount of autopsies that you've performed over the course of your career, I would assume you've testified in courtrooms just like this a

number of times; is that accurate?
A. This might be my first time in federal court actually, but I've testified in state court scores of times, maybe more than a hundred.
Q. Okay. And just so that this is clear, you don't just testify essentially for one side. You are subpoenaed by one side and called as a witness; is that correct?
A. That's correct. I'm not beholden to or retained by either side.
Q. For instance, you've testified when called by the prosecution, but I would also assume at times called by a defense attorney; is that correct?
A. It's pretty uncommon that the defense has subpoenaed me, but I'm sure it's happened.
Q. Okay. And are you somehow involved or have you been involved with a group called The Innocence Project?
A. Yes.
Q. Could you tell the jury a little bit about that, please.
A. Well, I certainly can't speak for The Innocence Project. I'm just a consultant for them, but it's an agency in New York City. I think they have branches all across the country, sometimes associated with law schools and universities, but basically they look at cases where they think somebody has been wrongfully convicted, convicted of crime they didn't actually commit.

For many years most of their exonerations were related to DNA evidence, evidence that just didn't exist at the time that a person was killed or raped, but later because of new science could be used to prove that someone was actually innocent. So I do pro bono work for The Innocence Project from time to time.

Q. Would your role in that capacity essentially be reviewing medical evidence and offering your particular opinion or diagnosis?

A. Yeah, it would be medical evidence. It would be autopsies. It would be the whole death investigation, sometimes including the scene investigation.

Q. Okay. And I might be using the term wrong. When you reach a conclusion, do you call that an opinion or a diagnosis from your medical perspective?

A. I think most physicians probably use the terms interchangeably, an opinion or diagnosis. When you go to another doctor to get a, quote unquote, second opinion what you are really wanting to see is, is their diagnosis the same or different than the first doctor.

Q. And that is sort of how you work in that capacity when you are called on as a consultant for The Innocence Project; is that correct?

A. To reach opinions or diagnoses?

Q. To review medical evidence.

A. Yeah.
Q. Okay. And again, that's presumably called typically by a defense attorney, correct, with The Innocence Project, not a prosecution office?
A. Correct. The Innocence Project, they are all defense attorneys.
Q. Okay. And your particular office, the Hennepin County Medical Examiners Office, you perform death investigations, but you are also the head of that office, correct?
A. Correct.
Q. And I would assume you have administrative duties and probably take a great deal of your time?
A. Yes.
Q. And would I be correct in stating that you have a staff of approximately 50 people?
A. Yeah. I don't have the exact number with me, but it's a little bit north of 50. We've continued to grow each year.
Q. Okay. And it sounds like your office also performs death investigations for not just Hennepin County, but at least two other counties; is that correct?
A. That's correct.
Q. And it seems to me like you might do a significant percentage of the death investigation or autopsies in the State of Minnesota; would that be accurate?
A. By -- yes, by population I believe my office covers a

third of the state.
Q. Okay. And physically speaking, your office is located in Minnetonka right now; is that correct?
A. Yes, we just moved there about four weeks ago.
Q. And before that where was your office physically located?
A. Downtown Minneapolis right across the street from the U.S. Bank Stadium.
Q. All right. Now, I'd like to talk about your particular timeline of involvement in this particular case. You are aware, obviously, through your review, that Mr. Floyd was treated at Hennepin County Medical Center and pronounced dead on the evening of May 25th, 2020; is that correct?
A. Yes.
Q. And you indicated that you became involved in this because this was on some level looked at as an unnatural death which involved your office; is that accurate?
A. Correct.
Q. Okay. And you indicated on direct examination that you received a call from I believe it was the Bureau of Criminal Apprehension, what sometimes lawyers refer to as the BCA, that first started this process; is that correct?
A. Yes.
Q. Okay. And they provided you some background on the incident in question; is that correct?

A. Yeah, it was pretty brief and a pretty high level.
Q. What do you mean by "high level"?
A. I just mean there weren't a lot of details in terms of the known timeline, how long the CPR took place, exactly who did what during the entire time of the incident with law enforcement.

By "high level" I mean it was, this man went unresponsive in custody. He was pronounced dead at the hospital. There may have been pressure applied to his neck.
Q. Okay. Sort of it didn't have a whole lot of details is what you meant?
A. Correct.
Q. Okay. And you indicated that you chose to perform this autopsy; is that correct?
A. Yes.
Q. How did this case get assigned to you?
A. I assigned it to me.
Q. That's because you are in charge, correct?
A. Correct.
Q. It's good to be the king.
A. Well, sometimes.
Q. Sometimes. But did you specifically choose this to perform this death investigation and put yourself in charge of the autopsy for a particular reason, Dr. Baker?
A. It's clear from the nature of this case that the chief

medical examiner just has to step in and do it.
Q. Okay. In other words, you are not going to have somebody do something you wouldn't do, correct?
A. Correct.
Q. Okay. And when you chose to put yourself in that role, were you aware of the fact that this case was gathering publicity?
A. I was peripherally aware of that because it was pretty early in the morning when I got the call from the BCA. I started the autopsy shortly after nine o'clock in the morning, so I don't know what the groundswell of public interest was during the day. You know, it was probably middle to late afternoon before I was done with the autopsy and really online, getting a feel for just how big this had become.
Q. Okay. And before you began that process where you performed what I would call the autopsy, physical examination of Mr. Floyd's body, you were aware of a Facebook video, correct?
A. I was aware that there was one, yes.
Q. Okay. Were you aware that that was, I suppose, quote unquote, going viral at that point in time?
A. I don't know if I knew that before or after the autopsy, but certainly that day I knew it had gone viral.
Q. Okay. And when you performed the physical examination

or autopsy of Mr. Floyd's body, you specifically chose not to view any videos before you performed that; is that correct?

A. That is correct.

Q. And that would be to avoid having that somehow bias or influence your medical findings; is that correct?

A. Correct.

Q. Okay. And following that particular autopsy, once you were done performing that, you indicated you got done in early to mid afternoon on Tuesday, May 20th, correct?

A. Did you say May 20th?

Q. I'm sorry. I did. It would be May 26th. Pardon me, doctor.

A. Yes.

Q. Okay. And again just so we're all clear, the incident with police and Mr. Floyd occurred on May 25th, 2020. I'm speaking about Tuesday, the next day, May 26, 2020. Does that clarify that?

A. Yes.

Q. Okay. Thank you for pointing that out to me.

And once you got done with that autopsy or that procedure, you spoke to a number of state court prosecutors; is that correct?

A. Yes.

Q. You did that via Microsoft Teams?

A. Yes.
Q. Did that include the Hennepin County Attorney himself, Michael Freeman?
A. Not that initial call, no.
Q. Was there more than one call on that day?
A. To the Hennepin County Attorney's Office?
Q. Yes.
A. No. I believe that was the only call that day.
Q. Okay. But you spoke to a number of people who you knew through your previous, your previous interactions with them were prosecutors from the state -- excuse me -- Hennepin County, which is the state court prosecutor, correct?
A. Yes.
Q. And do you recall telling them during that phone call or Microsoft Teams that there was no physical evidence of asphyxia?
A. Yes.
Q. Did you discuss the particular heart conditions that you observed during the autopsy with those particular prosecutors?
A. I don't recall all the details of that call, but it's almost impossible for me to think that I wouldn't have explained the heart condition because his, obviously his heart weight and the condition of Mr. Floyd's coronary arteries were known to me the moment I walked out of the

autopsy suite.

That was not a pending test that required conformation. That was something I would have known the moment I finished the exam.

Q. Okay. And just to be fair, it's not really unusual for you to have discussions with state court prosecutors; is that correct?

A. Correct. It's not unusual at all.

Q. Okay. Particularly Hennepin County is the largest county in Minnesota, so that probably generates most of your business, correct?

A. Yeah. I mean on a per capita basis, Hennepin County is most of the autopsies my office performs.

Q. Okay. So you speak frequently with the state court prosecutors, correct?

A. Yes.

Q. And there's absolutely nothing untoward about that, is there?

A. I don't believe so, no.

Q. Okay. And what they're really trying to do is get preliminary information from you to use in terms of presumably them making a decision about whether someone should be charged and what they should be charged with; is that fair?

A. As far as I know, yes. I'm not an attorney. I'm just a

doctor, but I assume that they need that information so that they can make appropriate legal decisions.

Q. Okay. Now later that day, did your office issue a press release about this particular death investigation?

A. Yes.

Q. And in their position as the Hennepin Medical Examiner, chief medical examiner, how often does your office issue press releases whether there's an ongoing death investigation?

A. We do it quite frequently. Our standard practice is, we do it on virtually all homicides because we know we're going to get inquiries from the press anyway, and so it's just easier to proactively put those out, which is easy to do in the modern era.

There are certain other cases that if we just know there's going to be a lot of press inquiries, we'll get ahead of it and put the press release out.

Q. Okay. The idea is, you want to provide information to the public that you are allowed to provide at that given time, correct?

A. Correct. Everything we're putting out is public data under Minnesota statutes, and so anybody could call us and get the same data.

Q. Okay. And in this case your office issued a press release at approximately 4:27 p.m.; is that correct?

A. I couldn't tell you the exact time, but I'll take your word for it.

Q. Would it refresh your recollection to look at a copy of that particular press release?

A. Sure.

MR. ROBERT PAULE: Okay. Your Honor, I'd like to show Dr. Baker a copy of what I've marked for identification only as T, I believe it's 16.

May I have a moment, Your Honor?

THE COURT: You may.

MR. ROBERT PAULE: May I approach Dr. Baker, Your Honor?

THE COURT: You may.

MR. ROBERT PAULE: Thank you. And, Your Honor, while Dr. Baker is reviewing that document, I would like to apologize because I don't have the physical copies of Exhibit T-16 handy right now. I will deal with that at an appropriate time if the court would allow me to do so.

BY MR. ROBERT PAULE:

Q. Dr. Baker, going to that document that I just showed you, does that refresh your recollection about what time the press release was actually issued?

A. It does. It says 4:27 p.m. on the bottom.

Q. Okay. And does the other side of the bottom of that document indicate the date that that particular press

release was issued?
A. Yes. It says May 26th, 2020.
Q. Now on that particular press release, is there a phone number of someone that if I was interested in following up on that I could call to try to get information from?
A. Yes.
Q. And would that person, without stating her name, his or her name, would that be essentially a public information officer that works for either your office or Hennepin County in general?
A. This individual works for the entire county and not just my office, but she is the person we would indicate for matters like this.
Q. Okay.
May I have just a moment, Your Honor. Excuse me. The exhibits should be ready, and I apologize.
THE COURT: Okay.
MR. ROBERT PAULE: Your Honor, may I approach? I now have two paper copies for the court, and I would move to admit Exhibit T-15. And if I misspoke and said T-16 I apologize. T-15 is the particular press release that Dr. Baker was just testifying to.
May I approach, Your Honor?
THE COURT: Yes, you may.
MR. ROBERT PAULE: Your Honor, may I publish T-15?

THE COURT: Well, I assume you've offered it. Is there an objection?

MS. TREPEL: No objection.

THE COURT: T-15 is received. You may publish.

MR. ROBERT PAULE: Thank you.

BY MR. ROBERT PAULE:

Q. Dr. Baker, one of the things that I become aware of is that this particular ELMO or device won't allow me to show the entire page at once, but do you see where this is marked T-15 on the bottom?

A. I do.

Q. Okay. And if I slide this down, does that allow you to orient yourself as to the Exhibit T-15?

A. Yes.

Q. And again, this is a copy of your press release report that was issued on Tuesday, May 26th at 4:27 p.m.; is that correct?

A. Correct.

Q. And again, on this document there is a -- there's a notation that please direct any media inquiries to a particular person at a particular phone number. That is essentially a public information officer that we spoke of; is that correct?

A. Correct.

Q. Okay. Thank you. Now, Dr. Baker, I assume after this

press release was issued, there comes the end of a workday and you go about the rest of your life; fair to say?

A. Yes.

Q. Okay. And after that press release was issued, would I also be correct in assuming that your office started to receive a number of phone calls from all kinds of different people?

A. Yes.

Q. And were some of these people simply inquiring about information, perhaps members of the media?

A. Yes.

Q. Were you getting other calls from the public of probably a broad range of reasons?

A. On this particular day I will confess I do not have a good handle on what our call volume was or the nature of the calls. Initially there they did seem skewed primarily to media inquiries.

Q. Okay. And just by way of background, this is the day after the incident at Cup Foods; is that correct?

A. Yes.

Q. Over the course of the next few days, would I be correct in assuming that your office started to receive more and more calls and requests for information about these cases?

A. Yes.

Q. Excuse me, this case. Pardon me.

A. Yes.
Q. And, Dr. Baker, would I also be correct in assuming some of these were media, some of these were general public. But also was your office receiving what could be termed as harassing phone calls?
A. Yes.
Q. And as that week we want on, there were obviously a number of protests going on, correct?
A. To my knowledge, yes. I did not watch a lot of the media coverage, but, yes, I'm certainly aware there were protests going on.
Q. Okay. And also you're the head of this office. Some of these protests were going on downtown; is that correct?
A. Yes.
Q. Were people approaching your office in any way to protest physically speaking?
A. I honestly don't know if those were directed at my office or U. S. Bank Stadium was just a logical place to organize a protest. It was not always clear to me.
Q. But were these protests, or whatever we want to call them, occurring generally in the area of your offices at least at times?
A. Yes.
Q. And this is over the course of several evenings, correct?

A. Yes.
Q. And I think we all remember this time, but these protests were getting more and more large, more and more destructive, particularly in the evening; is that correct?
A. Yes.
Q. And would I also be correct in assuming that your office over the course of the next week or so started to receive calls of a more threatening nature?
A. Yes.
Q. Were some of these phone calls specific to you, sir?
A. Yes.
Q. Now, going to May 28th, that would be Thursday, so three days after the incident with the police at Cup Foods, on that date did your office issue a second press release?
A. I don't recall the specific date of the second press release, but I would be happy to look at a copy if you have one.
Q. Certainly.
And, Your Honor, I would -- excuse me -- like to show Dr. Baker what I've marked for identification only as Exhibit T-16. I do have two copies for the court and have provided them to counsel.
May I approach, Your Honor?
THE COURT: You may.
MS. TREPEL: Mr. Paule, do you have one for me?

MR. ROBERT PAULE: Yes.

BY MR. ROBERT PAULE:

BY MR. ROBERT PAULE:

Q. Dr. Baker, excuse me. Does looking at what I've offered for identification only as Exhibit T, I believe it's 16, does that refresh your recollection about the press release and when it was issued?

A. It does.

Q. All right. And is that a fair and accurate copy of that actual press release?

A. I believe it to be, yes.

Q. And just so I'm aware, is this something you would have any input in reviewing before it's released?

A. This particular press release, I definitely had input on this. The language in the second full paragraph is probably entirely me.

Q. Okay.

Your Honor, I would offer, and I apologize, I believe it's T-16.

A. Correct.

MS. TREPEL: No objection.

THE COURT: T-16 is received.

BY MR. ROBERT PAULE:

Q. And, Dr. Baker, may I take that back?

Permission to publish, Your Honor?

THE COURT: You may.

MR. ROBERT PAULE: Thank you.

BY MR. ROBERT PAULE:

Q. Dr. Baker, again I'm showing you what's been marked and admitted as Exhibit T-16, and then I'll pull it down so you can see the entire thing.

Is this a copy of the press release your office issued on May 28th, 2020?

A. It is.

Q. And just to orients everyone, this is Thursday, the 3rd day after the incident at Cup Foods; is that correct?

A. Correct.

Q. Okay. Can you tell the jury why you had this particular press resist issued?

A. Yeah. So we're getting tremendous pressure from the public and from the media to release information. You know, there's the public has a very skewed view of what medical examiners do because of the way we're portrayed on television and the movies.

You know, the afternoon person probably thinks that most deaths are resolved within 59 minutes and you get your DNA results back from the lab in seconds and you get your toxicology results back in minutes, and none of those things happen in real life. I mean a good death investigation takes time.

And so this was just a way of telling the public we understand you're looking for information, but we have these other things that we need to do. There's still an ongoing investigation. There's still pending laboratory studies. We will be as transparent as we can under Minnesota law, but this is the way these things play out.

Q. Okay. And was your office also getting any calls or requests for actions by any elected officials during this time?

A. To my knowledge, no.

Q. And going to the contents of this, could you read the paragraph that I'm putting my finger on. Is that the second paragraph that you're referring to, Dr. Baker?

A. Yes.

Q. Could you please read that for the jury, and I think it's on that screen in front of you.

A. It's not.

Q. I apologize. I should have taken care of that. Thank you very much. I apologize, Dr. Baker. I thought you could see it in front of you. I didn't realize you were looking over your shoulder.

Could you please read that second paragraph to the jury?

A. The medical examiner recognizes the public expectation for timely, accurate and transparent information release

within the confines of Minnesota law. However, the autopsy alone cannot answer all questions germane to the cause and manner of death and must be interpreted in the context of the pertinent investigative information and informed by the results of laboratory studies.

Q. And, Dr. Baker, at the time this press release was issued, you had not yet received the toxicology results from Mr. Floyd; is that accurate?

A. That's correct.

Q. Would that be one of the more important components in you waiting until you had all of the information to provide your final diagnosis?

A. Yes.

Q. Or opinion. Pardon me. All right. Now, Dr. Baker, I'd like to point out a couple things. On the first press release your office issued, there was a phone number to reach the public information official, correct?

A. Yes.

Q. And on this particular document it does not appear that that information is contained on it; is that correct?

A. Correct. We provided her email address instead of her phone number on this document.

Q. Would that presumably be because a lot of people were probably calling up that person seeking information?

A. I can only assume that's the reason that this change was

made.

Q. Okay. Thank you very much.

Now, Dr. Baker, going back to the time that this whole case is occurring, I know that you testified that you weren't essentially watching a lot of the news coverage, but I assume you had some aware, awareness of what was occurring in our community during that time; is that correct?

A. Yes.

Q. Speaking specifically to the protests or the riots or however we wish to describe these, correct?

A. Correct.

Q. Okay. Are you aware that the Third Precinct burned down the evening into the early morning hours of --

MS. TREPEL: Objection, Your Honor. 403, relevance.

THE COURT: I will overrule. You may answer.

MR. ROBERT PAULE: Thank you.

And I'll finish the question, Dr. Baker. Are you aware that the Third Precinct was burned down during these protests the evening of either Thursday, March 28th [sic], or into the early morning hours of Friday, March 29th [sic]?

THE WITNESS: I don't recall the date that it happened or the date that I became aware of it, but I was certainly aware that that had happened.

BY MR. ROBERT PAULE:

Q. And I would assume on some level as the head of the medical examiners office you were dealing with security issues without going into any detail; is that accurate?

A. Yes.

Q. Okay. Now obviously in this case you're aware that Mr. Chauvin was charged in state court with various homicide charges, correct?

A. Yes.

Q. And that occurred on Friday, May 29th; is that correct?

A. I believe so, yes.

Q. And are you also aware that the charging document itself, the complaint, criminal complaint against Derek Chauvin, was made public on that day?

A. Yes.

Q. Did that generate more phone calls and more requests for information from your office?

A. I believe it did.

Q. Was that at least in part do you assume because there was language in that charging document that referenced preliminary findings by your office?

A. Yes.

Q. Specifically, the preliminary findings included the fact that there were no physical findings that supported a diagnosis of traumatic asphyxiation or strangulation; would

that be accurate?
A. Yes.
Q. Secondly, that there were underlying health conditions including coronary artery disease and hypertensive heart disease; is that correct?
A. Yes.
Q. And third, that the combined effects of the restraint by the police, his underlying health conditions, and any potential intoxicants likely contributed to his death, referring to Mr. Floyd?
A. Yes.
Q. And that would have been information presumably that the County Attorney's Office, the state court prosecutors, had obtained from you in that May 26th, the Tuesday, conversation, correct?
A. That conversation and subsequent conversations, yes.
Q. So you had other conversations with the prosecutors up until that Friday; is that correct?
A. One other that I can specifically recall, yes.
Q. Do you recall what date that was?
A. We had a, an in-person meeting on the 27th.
Q. That would be the Wednesday; is that correct?
A. Correct.
Q. And is that kind of where you went over some of these findings with them?

A. Yes.
Q. Okay. And was Mike Freeman, the Hennepin County Attorney, at that particular meeting?
A. He was.
Q. Okay. And just so I'm clear, were you aware whether any of those meetings, whether they were being recorded so that everyone could have a record of what was said?
A. If you mean literally recorded like with a recorder or a cell phone or something, no, I don't believe any of that took place.
Q. No one made you aware of that in any event, did they, Doctor?
A. Are you implying that they were recorded?
Q. I'm not implying anything at all. I'm just asking you. Do you have any -- do you have any idea whether they were being recorded? Let me rephrase it differently.
A. Okay.
Q. And I'm sorry. I'm not trying to be contentious with you.

Doctor, do you have any idea whether or not any of these conversations were recorded?
A. To my knowledge, none of them were recorded.
Q. Thank you. All right. Now, that was Friday, correct? And did your office continue to receive more requests for information and more phone calls from members of the public?

A. Yes.
Q. Can you describe sort of the tenor of people calling up, what were they saying essentially, if you know?
A. I did not have to field those phone calls. My staff did, and I would say by a very large margin they were threatening. They were harassing. They were calling people out by name, threatening families, threatening to out people by home addresses.
Q. Have you ever in your entire career had a situation where anyone in your office was threatened with violence by anyone as a result of just simply doing your job?
A. I have personally been threatened once in a previous case. That was very short-lived, but beyond that I'm unaware that any of my other staff had ever had something like this happen.
Q. And was this going on relatively constantly throughout that first week?
A. We are open 24 hours a day, so it was around the clock.
Q. Okay. Now do you know a physician named Dr. Roger Mitchell?
A. I do.
Q. Could you tell the jury who that person is, please?
A. Roger is a forensic pathologist. He is a friend of mine. He, up until recently, he was the chief medical examiner in Washington, DC, for several years at least. I

believe he has since left that position and assumed the chair of the pathology department at Howard University.

Q. Okay. And you yourself at one point worked in Washington, DC; is that correct?

A. Well, yes and no. I mean, I was in the military. My office was actually in Rockville, but my headquarters was in Washington, DC.

Q. It shows my ignorance one more time, but you know Dr. Mitchell. Had you known him for a number of years before this, this weekend we're talking about?

A. Yeah. I've known, I've known Roger for many years. We didn't cross paths when I worked in DC because Roger is younger than I am, and I had very little interaction with the DC office as a military officer, but, yeah, I've known Roger for years.

Q. Okay. And are you familiar with the acronym N as in Nancy, A, M as in Michael, E as in Edward.

A. Yes.

Q. Could you tell the jury what that is, please?

A. Yeah. That's the National Association of Medical Examiners. It's the professional organization in the United States to which nearly all forensic pathologists like me belong. We also have affiliate members, investigative members, administrative members and coroner members.

Q. So basically professionals and doctors that practice in

the area of pathology, correct?

A. Forensic pathology specifically, yes.

Q. Excuse me. And could you explain to the jury what forensic pathology means, the distinction? I may be using the terms incorrectly. I apologize.

A. Sure. So the umbrella term "pathology" refers to what 99 percent of my colleagues do in hospitals, which is they're the pathologist that look at every biopsy that's removed from every patient.

Anytime tissue is removed from somebody for diagnostic reasons, it could be something as simple as a PAP smear or something as complex as an entire organ with a tumor in it, that tissue is examined by one of my colleagues. That's what we call anatomical pathology.

Also hospital based is all the laboratory work pathologists do. So every time you get your blood sugar measured, blood gas run, your white cells counted, anything that's done in a laboratory in a hospital is almost certainly overseen by one of my colleagues, and that hat is known as clinical pathology.

Forensic pathology is a subspecialty under that overarching field of anatomic and clinical pathology where we have additional training in performing autopsies and supervising death investigations and certifying cause and manner of death.

Q. Okay. And you're board certified in forensic pathology, are you not, Dr. Baker?
A. Yes, and anatomic and clinical pathology.
Q. Excuse me. But, Dr. Baker, were you also a member of that National Association of Medical Examiners?
A. Still am.
Q. Were you the past president?
A. I am a pass president.
Q. Okay. And is Dr. Roger Mitchell a member of that particular organization as well, too?
A. I did not look up his membership status as of today. I assume he is still a member unless he had some reason because of his transfer to academia to drop the membership.
Q. I don't know any different. I was just asking if you knew.
A. Yeah. I don't know.
Q. Okay. And have the two of you, you and Dr. Roger Mitchell, have you actually worked together on certain cases?
A. I don't know if you'd call it working together, but, yes, we were jointly involved in a previous case.
Q. Okay. Would that be a case referred to as the Philando Castile case based in Minnesota?
A. Yes.
Q. And you did not testify in that case, did you,

Dr. Baker?

A. I'm pretty sure I did testify in that case.

Q. Okay. Excuse me. But that's the case you worked with Dr. Roger Mitchell on; is that correct?

A. Well, again, I wouldn't use the phrase "worked with." Roger was brought in either by Mr. Castile's family or their attorney to do a review of my office's work, and so I hosted Roger in our library. I provided him with all of the photographs, all of the documentation, all of the X-rays, everything he would need to do a thorough review of the case and then report back to the family or their attorney.

Q. Okay. And I'm sorry. I wasn't trying to mislead you or to do anything like that.

You essentially allowed him to review your findings, correct?

A. Correct.

Q. But as a lawyer I oftentimes will talk to other lawyers to get certain ideas. Do you do the same thing as a medical examiner?

A. Yeah. Physicians do that all the time. It's called curbsiding when you grab another physician who has experience or particular expertise or maybe they're even a different specialty and you say, hey, can I run something by you.

Q. Okay. Have you done that with Dr. Mitchell in the past?

A. I don't know that I would have done that with Roger in the past. It's entirely possible. I mean, Roger is talented enough and I respect him enough that I can imagine myself calling him, but I don't know that I had ever done it before this case.

Q. Okay. Now going back to the Friday afternoon, between Friday afternoon and the next Monday, did you receive a phone call from Dr. Mitchell?

A. Yes.

Q. Can you tell the jury just generally what that phone call was about?

A. It will have to be generally because of course this was a year and a half ago. I don't remember all the details.

Q. Certainly.

A. But Dr. Mitchell called me, and he was unhappy with the language that had come out in the charging document, and just as a little bit of a back story here, Roger chaired the committee in name, the professional organization, that wrote our position paper on the approach to in-custody deaths.

So I mean he has expertise in this area. He had led the group that wrote the paper, and one of the tenants of the paper, if I'm recalling correctly is, you know, preliminary results should not go out. It should be the final product that the public gets all at once.

And so Roger was unhappy that that had happened,

and so I explained to him it wasn't my call to do that. The County Attorney writes the charging document. There is no preliminary autopsy report. We don't print anything out and produce it and give it to anyone in the form of an actual preliminary report, but obviously law enforcement and the County Attorney gets verbal information as the case develops as to what we do and don't yet know about the case.

So I explained that to Roger, that it was not a preliminary report. That was a document authored by another department.

Q. In other words, the state court prosecutors had drafted that document that included probably information you had provided to them that they deemed to be preliminary findings, correct?

A. Correct.

Q. But as a medical examiner you don't issue preliminary findings, correct?

A. Correct.

Q. Okay. And so that's what Dr. Mitchell was upset with you about, correct?

A. To the best of my recollection, that's what prompted him to call me, yes.

Q. Okay. Did you receive a different phone call from Dr. Roger Mitchell later on that weekend or Monday morning, perhaps?

A. I think I did. I don't remember if he called me once or twice, to be honest with you. That was a very hectic weekend.

Q. Okay. Do you recall whether or not he was critical of the information that was contained in that criminal complaint?

A. He was unhappy, yes.

Q. Did he speak to you about the term "neck compression"?

A. I'm sure we discussed it.

Q. Did he in fact inform you that you had to include the words "neck compression" in your final diagnoses?

A. I don't know if the phrase "had to include it." Again, Roger is a valued colleague, and I'm going to take his input, just as I would the other doctors in my office or other doctors that I routinely turn to.

Q. Sure, or the doctors you curbside with, correct?

A. Correct.

Q. Okay. But did Dr. Mitchell also tell you at the time he had drafted an opinion education op ed I think would be the term to be published in the Washington Post?

A. He did mention an op ed. I don't remember if it was the Post or the Baltimore Sun, but he did mention he was either writing one or had drafted one.

Q. Did he indicate that he was going to be critical of what these preliminary findings would be?

A. He may have. Again, I don't recall the specifics of the call.
Q. Okay. And again, you don't recall any specifics about the words "neck compression" as you sit here; is that correct?
A. Again, I don't recall specifically, but it wouldn't surprise me if Roger and I did talk about the autopsy. Again, he's a valued colleague. He chaired the committee that wrote the paper on how these deaths get investigated.
Q. Sure. And doctors are opinionated people, are they not?
A. Some more than others.
Q. Well, and just in a general setting, Dr. Baker, you're essentially tasked with coming to your opinion or diagnosis about a particular situation in front of you, are you not?
A. Correct.
Q. And as a doctor you are trained to do as much research, put as much time as you need to do everything you need to, but to be firm in your opinion if you feel it's justified, correct?
A. Yes.
Q. That's the general training for a doctor, is it not?
A. I guess that's one way to character it, yes.
Q. Okay. But in any event these conversations or conversation with Dr. Roger Mitchell occurred before you signed the death certificate; is that correct?

A. Correct. I don't believe I signed the death certificate until June 1st, if I have my dates right.
Q. Okay. I have down as perhaps June 5th, but it was after this conversation in any event, correct?
A. Yes.
Q. Okay. And then do you recall when you ultimately received the toxicology results on Mr. Floyd's blood sample?
A. Yes.
Q. Can you tell the jury what date that was, please.
A. Could I take out the autopsy report to refresh my memory?
Q. Absolutely.
A. So I've got the actual toxicology report in front of me. It was actually issued the evening of May 31st at 6:44 p.m.
Q. That would have been Sunday evening, would it not, Doctor?
A. Yes.
Q. Okay. And so is that -- and just for my edification, is a report like that sent to perhaps your email, or is it sent to your office more specifically? How would you become aware of that?
A. Of these tox reports?
Q. Yes.
A. Normally they come to an inbox that's managed by my technicians, and then they put the autopsy report in the

right case in our electronic database and alert the physician that the results have come in.

Q. Okay. So the idea being, you know, you get a notification there's some new information about this particular case, correct?

A. Correct. And just to clarify, given the complexity of this case and how high profile it was, it is entirely possible that this could have been emailed to me directly from the lab at the same time it was emailed to my office. I don't recall, but it would not surprise me if that had happened.

Q. Okay. And then on Wednesday, June 3rd, is that the date that your final autopsy report was completed?

A. No. I believe I signed it on June 1st.

Q. Okay. Would that be the date that it was released publicly?

A. Yes.

Q. And that was done with the input from Mr. Floyd's family, correct?

A. Mr. Floyd's family was given a chance to review the autopsy report before it was going to go public, and if I could expand upon my answer because it's important the jury understands this.

Minnesota has a very tightly written medical examiner data privacy law. It's Minnesota Statutes Chapter

13.83, and it dictates what the medical examiner can and cannot make public. And there's very few things in Minnesota that actually can be automatically made public following a death investigation. It's basically what's on the death certificate.

So for us to release an autopsy report to the public actually requires a written court order, and so that's why there's a lag time between the day I signed the autopsy, which was June 1, and the release of the autopsy to the world, which was June 3. So part of that was making sure that Mr. Floyd's family got a chance to see this.

And part of this, of course, was attorneys going in front of the judge to get the order to make this public.

Q. Okay. And just to back up a step, let's assume that I were to pass away and you were to do my autopsy, you would sign my death certificate. Under that state law, only the death certificate would normally be made public, correct?

A. Correct. Your family members could get a copy of your autopsy report. They could get the entire medical examiner file, but to the rest of the public that would be off limits for 30 years under Minnesota statute.

If the case is classified as a homicide, no one can access the medical examiner's file except law enforcement and the legal system.

Q. That's to sort of protect an ongoing investigation in

most instances, correct?
A. I assume that's the rationale for the statute is to protect the integrity of upcoming judicial proceedings.
Q. But the idea is that the death certificate is a public document, so that's to be released, but the rest of it is intended to be protecting the privacy of, say, my particular family if I was the person in that stead, correct?
A. Yes.
Q. And is that body of law that you talked to, is that referred to as the Minnesota Government Data Practices Act?
A. I don't know the name of the overarching act. I just know the one little section that pertains to the medical examiner and it's 13.83.
Q. Okay. In your final autopsy report, am I using the right term, Doctor, when I use that term?
A. Yes.
Q. Okay. That includes the term "neck compression"; is that correct?
A. Correct.
Q. Okay. Now just so I'm clear, you indicated that this was a cardiopulmonary arrest complicating law enforcement subdual restraint and neck compression; is that accurate?
A. Correct.
Q. And yesterday when you were testifying, you used the word "top-lined" it. What did you mean by that, Dr. Baker?

A. So if you, if you look at an actual physical death certificate work sheet that we fill out on every case, the top line is literally the top line where you put the immediate cause of death. I think we may have looked at this yesterday.

And then the other significant conditions are lower on the death certificate. Those are the things that contributed to the death but are not immediately responsible for what took place on the top line.

Q. Okay. And I assume as a doctor you choose your words very carefully and accurately; is that correct?

A. I certainly try to.

Q. And I think you had to explain this to me, but cardiopulmonary arrest means essentially the heart and the lungs stop functioning; is that correct?

A. Correct.

Q. And then you used, the next word is "complicating"; is that correct?

A. Correct.

Q. What did you intend when you used that word, Dr. Baker?

A. When a physician uses the word "complicating" he or she means an untoward or unexpected outcome on the heels of some kind of medical intervention. So typical examples in medicine, you do a hip replacement on a patient, and they develop a blood clot in that leg. That would be a

complication ensuing on the heels of an intervention.

If your doctor starts you on a new medication and you have an allergic reaction to it, that would be a complication ensuing on the heels of an intervention.

Q. Would another example be putting a patient under anesthesia to perform surgery and them having end up with a cardiopulmonary arrest, if I'm using that term correctly?

A. Yes, that's a potential complication.

Q. So complicating, in your words, really means it's something that occurred but was not a foreseen consequence of an act, correct?

A. It depends on the nature of the complication. I mean some complications in medicine are known. There's a known risk with some procedures, and some complications are just completely unexpected.

Q. Okay. But whether you chose to use the word "complicating," you meant unforeseen, correct?

A. I mean on the heels of.

Q. Okay. Thank you for that clarification.

And it was complicating the law enforcement subdual. What does that term mean when you use it, Dr. Baker?

A. So I'm not a use of force expert. I only understand these terms in the broadest sense that a medical examiner would understand them. So when I mean subdual, I mean when

somebody goes from being free and mobile to being in your control.

Q. Okay. And then you use the word "restraint." What did you mean by that term?

A. That's the mechanism by which you are maintaining your control over that individual. It might be that you are doing it physically. It might be, you might be doing it chemically. You might be doing it with restraints. You might be doing it with all of the above, but to me "restraint" means you are maintaining your control over that individual.

Q. So to me it seems like subdual means to subdue someone somehow, and restraining means to keep them essentially subdued; is that fair?

A. I think that's a fair synopsis of what I just said, yes.

Q. And you also chose to include the word "neck compression." Can you explain why you did that, Dr. Baker?

A. Yes. Because as I mentioned yesterday, in my experience neck compression was a unique form of restraint. I had not seen that done before. I've certainly seen handcuffs. I've seen people restrained in different positions. I've seen people restrained in chairs, but I had not seen that particular form of restraint used to maintain control of someone.

Q. Okay. So your use of the term "neck compression" was a

type of restraint, correct?
A. Correct.
Q. It was not separate from the restraint that you had listed earlier; is that also fair?
A. Well, again, it's separate in the sense that at least in my experience it was a unique form of restraint.
Q. But that was part of the restraint that was being used on Mr. Floyd that you observed, correct, Dr. Baker?
A. Yes.
Q. Okay. And then, Dr. Baker, do you remember meeting with agents from the Federal Bureau of Investigation, the Minnesota Bureau of Criminal Apprehension and some federal prosecutors back on July 8th of 2020?
A. I mean, I remember that that meeting happened. I'm not going to be able to quote you chapter and verse of what was discussed.
Q. Certainly, but you remember a meeting occurred. Do you disagree with that particular time frame?
A. No, I don't disagree with that, and I believe that was a virtual meeting if I'm recalling correctly.
Q. Okay. And we're in 2022, but "virtual" means essentially because of the pandemic people were separated physically but meeting over a computer, correct?
A. Correct.
Q. Like a Microsoft Teams or a Zoom?

A. Correct.
Q. Okay. Thank you. And, Dr. Baker, just so the jury knows, as the Hennepin County Medical Examiner, I assume you have all kinds of legal issues that are part of your day-to-day effects of your job; is that correct?
A. I'm not sure what you mean by --
Q. Poor question. Do you have lawyers that will represent you or other members of your office or your office in general if need be?
A. Yes. We have a civil attorney from the county attorney's office available to us as needed.
Q. Okay. And was a representative like that, a legal representative from the Hennepin County Attorneys, separate from the prosecution but representing your office or you present on this meeting as well?
A. Yes.
Q. Okay. And do you remember discussing the restraint that was going on at the foot of Mr. Floyd during this meeting?
A. I don't have any specific recollection of that.
Q. Okay. Do you remember indicating that there was no relation to the position or restraint to Mr. Floyd by the officers at his feet and the actual cause of death?
A. I don't remember that particular part of the discussion, but to answer your question, I wouldn't consider what was happening to Mr. Floyd's feet to go beyond the bounds of the

term "restraint" as I used them in the, on the death certificate.

Q. Okay. Do you remember indicating that the level of fentanyl that was found in Mr. Floyd's blood was "relatively high" at that meeting?

A. Again, I don't recall the specifics, but that sounds like exactly what I would say to describe his fentanyl level.

Q. And going then to the amount of methamphetamine that was discovered in Mr. Floyd's body, do you recall at that meeting referring to it as relatively small?

A. Again, I can't recall the specifics of that meeting, but it sounds exactly like how I would describe his methamphetamine concentration.

Q. All right. You're aware that that particular meeting was not recorded; is that correct?

A. Correct.

Q. Because that became the subject of some contention between the people who were doing the interview and perhaps your legal representatives, correct?

A. Yes.

Q. Can you tell the jury what occurred then, please, Dr. Baker?

A. Again, I only recall the highest level details. It was originally represented to me that that meeting would be

recorded, and then a decision was made kind of at the last minute to not record it.

Q. Do you know who made that particular decision, Dr. Baker?

A. I just know that it wasn't me or my attorney. I don't know who in, on the other end of the call made that decision.

Q. Okay. And going to these series of emails that apparently took place following this meeting seeking clarification, was one of the points of clarification what you meant by the use ever either "restraint" or "stress," if you know?

A. It could have been. Again, I don't recall.

Q. Okay.

Just a moment, Your Honor.

THE COURT: Sure.

BY MR. ROBERT PAULE:

Q. Dr. Baker, do you recall, going to that last point we were talking about, an email drafted by a person from your office and sent to members of the federal prosecutors office?

A. Are you actually referring to something written by a county attorney?

Q. I am.

A. Okay. So that wouldn't have come from my office. That

would have come from the county attorney's office, if we're talking about the same document.

Q. Excuse me. And just so we're clear, the county attorney's office does many things, if you know, correct?

A. I'm sorry. Could you repeat that?

Q. Sure. The Hennepin County Attorney's Office, that's the office that provides you a lawyer when you need one, correct?

A. Correct.

Q. They also do other things, including prosecuting people for criminal offenses that occur within Hennepin County, correct?

A. Yes.

Q. But the person that is your lawyer is entirely separate only representing you and presumably your office, correct?

A. She does have other duties, but, yes, she's the only lawyer that represents my office, and she is a civil attorney, not a criminal attorney.

Q. Okay. And again, your office is neutral and independent from any law enforcement, correct?

A. Correct.

Q. Okay. But did you perhaps have a conversation with your legal representative to provide points of clarification that arose out of that meeting on July 8th?

A. Yes.

Q. Did one of those points of contention involve whether or not the restraint occurring included in your cause of death include the time that was spent on the ground?

A. I do recall that coming up, yes.

Q. Okay. And just so the jury's clear, what do you mean "separate and apart from any emails," because this is your opinion?

What did you mean when you used the words "restraint" during that time period? Excuse me.

A. So if -- so broadly speaking, as you look at videos of the event, I would use the term "restraint," and again I am not a use of force expert. It might have different meanings to different people, but I would use restraint to more or less define the time when Mr. Floyd was out of the back of the vehicle, because he'd gone all the way across the backseat, after he was out of the vehicle and on the ground.

Starting with the time he was on the ground and being held in roughly the same or similar position for about nine or nine and a half minutes, I would consider that the restraint.

Q. And that was one of the things that you spoke to your counsel about clarifying coming out of that meeting, would that be correct?

A. To the best of my recollection, yes. I don't have that document in front of me.

Q. Would it, had you ever seen the email that was sent by your lawyer to the federal prosecutors?
A. Yes.
Q. Would it refresh your recollection to look at that?
A. Sure.
Q. Okay. And it is --
May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. ROBERT PAULE:
Q. Dr. Baker, I'm going to show you a copy of that email.
For counsel's benefit, it is 000 --
MS. TREPEL: I have it, Mr. Paule. Thank you. I'm good.
MR. ROBERT PAULE: 00040651.
THE WITNESS: Okay.
BY MR. ROBERT PAULE:
Q. Dr. Baker, does that refresh your recollection about the restraint that we were just talking about?
A. Yes.
Q. That was a point that your representative spoke to you about to provide clarity about what your position was; is that accurate?
A. Yes.
Q. And would I be correct in assuming that what you wanted to convey when you used the word "restraint" you were

including the activities when Mr. Floyd was on the ground?
A. Yes.
Q. Could I back up a step and ask what you meant by "subdual" at this point, what particular actions?
MS. TREPEL: Asked and answered.
THE COURT: I'm going to overrule. I -- you may answer.
THE WITNESS: So as I mentioned earlier in the broadest sense as I am not a use of force expert, I would regard the term "subdual" to reflect the time from when the person went from being completely independent to the time when you had gained essentially full control over that individual.
In the context of the events of the night of May 25th, I would say that would start with the moment that Mr. Floyd was handcuffed and being the struggle that ensued in the back of the vehicle when he went in one door and out the other until the time he was on the ground and being restrained. To me that I would broadly define that as the time he was being subdued.
BY MR. ROBERT PAULE:
Q. Okay. And to that point, before you completed your autopsy report, you had viewed a number of videos, correct?
A. Correct.
Q. And that would be the, what we're calling the Facebook

video, the video that kind of went viral; is that correct, Dr. Baker?

A. Yes.

Q. Also the video from the inside of Cup Foods?

A. Yes.

Q. And also the body-cam footage from the officers involved; is that correct?

A. Yes.

Q. So you were able to see what was occurring as Mr. Floyd was being extracted from the car, being handcuffed, walked over to the Dragon Wok, walked over to the squad car, the struggle inside the squad car and then what occurred on the ground, correct?

A. Yes.

Q. Okay. Did it occur, or excuse me. Did it appear to you as if there was a struggle when Mr. Floyd was being handcuffed?

A. I, I don't recall that part of the video.

Q. Okay. Going back to the overall point, I think yesterday you testified that sort of in laymen's terms what occurred to Mr. Floyd was, the stress of what was happening was more than his heart could handle given his particular medical conditions and the toxicology results, the drugs that were in his body?

A. Yes.

Q. And when you talk about the word "stress," are you referring to the stress beginning at the time the police started interacting with him?
A. Essentially, yes.
Q. Is there any way you can quantify that?
A. No. I mean, I can't put a number on it.
Q. So in other words, you can't tell anyone just how much stress Mr. Floyd was feeling when the police officers approached and pounded on the window, correct?
A. Correct.
Q. Or when they asked him to step out of the vehicle and pointed the gun at him, correct?
A. Correct. I can't quantify that.
Q. Okay. Because stress is something you talk about where adrenaline is rushed into the body?
A. Yes.
Q. So you can't exactly tell when that process began with Mr. Floyd, other than as a doctor and probably very rational person, you would assume that started the minute he started interacting with police; is that accurate?
A. I mean, I would view stress as gradations depending on what the activity is. Just being approached by a police officer is probably more stress for some people than for others. I've never personally had a gun pointed at me, but I'm going to assume that that would be very stressful.

And then I think one can reasonably infer that when the struggle is taking place in the back of the vehicle, clearly there has to be some physical stress because there's exertion going on.

Q. Okay. And on some level the exertion levels --

A. Go ahead.

Q. Thank you. The exertion level that you are referring to is essentially similar to when a person exercises, correct, in some broad sense.

A. Well, I mean, in one sense it is, but exercise is generally voluntary.

Q. Sure. But if a person's exercising, let's say I get up and I do Peloton in the morning, I'm trying to work out my body and get my muscles moving, correct?

A. Yes.

Q. And does that produce lactic acid?

A. It does.

Q. Okay. Is that on some level similar to what's referred to as acidosis?

A. Lactic acid is one of the chemicals that results in the blood being more acidotic, yes.

Q. Okay. Now I'd like to shift gears. Do you remember during that discussion with the FBI and the other people involved on July 8th, do you recall the topic of excited delirium coming up?

A. I do not specifically recall that coming up.
Q. Are you familiar with that term?
A. I am.
Q. Could you tell the jury just in general terms what that term means to you and what you know about it, please?
A. Sure. And this will have to be in general terms, because I'm not a clinician who treats people who are in the excited delirium or assesses it or manages it.
Q. By the way can I interrupt you, Doctor?
A. Please.
Q. You say you are not a person that normally treats it. What type of medical professional would be the person that typically treats that?
A. It would, well, outside of a hospital, it would be paramedics and allied health care professionals in the hospital. Would also certainly be emergency room physicians.
Q. Okay. Excuse me. Please go ahead.
A. So to answer the previous question with regard to my understanding of excited delirium, it's a condition that people can go into, typically but not always precipitated by stimulant use, the classic case being cocaine, although there are potentially others, and it produces a variety of behavioral and physical effects.
Those include things like violent behavior,

destruction of property, incoherent ability to speak, ripping off your clothing and running down the street, sweating profusely, being quite hypertensive meaning you were very, very warm as a result of this condition.

It is a potentially life threatening condition. The mortality rate, my understanding from the literature, is quite high. There is one other thing. I believe the, quote unquote, super-human strength is often reported as one of the effects of excited delirium.

Q. Certainly. And to be fair, is it correct that this is an area of some controversy medically?

A. Yes and no.

Q. Could you expand on what you meant by that, please?

A. Well, you know, there's some people that claim that the term is overused and that that may be true. There's some people that are concerned that we're not recognizing it enough, and that may be true. It's a difficult. It's a difficult condition to define because it's a syndrome.

It's not one unique feature that's diagnostic of something. I have used the term on rare occasions in the past on deaths that I've investigated, so I'm certainly familiar with it.

Q. Now, historically the medical examiners office in Hennepin County, how long has that office been around, if you know?

A. Well, it started as a coroners office in 1897. It converted to a medical examiners office in 1963.
Q. Could you explain the distinction between a coroner and a medical examiner, please?
A. In the State of Minnesota, a coroner is an elected official who runs that county's death investigation system. A medical examiner is an appointed forensic pathologist who runs the death investigation system. Minnesota and I believe Ohio are the only two states that require their elected coroners to be licensed physicians.

In many parts of this country, an elected coroner has a minimal age requirement, they have to live in the county in which they hope to be the coroner, and they have to have a high school diploma.
Q. But not necessarily a medical degree?
A. Correct.
Q. Whereas medical examiners need to be certified and have to have a medical degree, correct?
A. Yes. With very rare exceptions, by definition the term "medical examiner" is equivalent to forensic pathologist.
Q. And just going into the general idea of pathologist or forensic pathologist, but say a coroners office is now a medical examiners office, is it fair to say that sort of the abilities or diagnoses or the training has evolved?
A. From?

Q. From, say, the early 1900s until now?
A. Oh, yes. I mean technology has radically changed in the things we are able to do as forensic pathologists.
Q. Has terminology changed as well?
A. I guess you'd have to be more specific.
Q. Sure. The Hennepin County medical examiners keep records over the years; is that correct?
A. Yes.
Q. How far back do those records go?
A. We have records back to the early 1900s in the form of the investigations that were done by the coroner back at that time. I don't know how many autopsies were necessarily done at that time, but all of the death investigations are still in our record books.
Q. And I was using pathology, like all medicine, is an evolving field, is it not?
A. Correct.
Q. And going back to some of those early days, they would use terms as causes of death that clearly we don't use any more; is that correct?
A. I haven't looked through those books in a long time, and I don't know how to answer that question.
Q. Are you familiar with the cause of death as criminally insane being used at some point by your office?
A. I've never heard that used as a cause of death before.

It sounds a little archaic.

Q. You wouldn't, you wouldn't define anyone as being criminally insane at this point, correct?

A. No.

Q. We don't even use the term "insanity," do we, Doctor?

A. I don't know. I'm not a psychiatrist or a lawyer.

Q. Okay. Now, when you were meeting with the federal agents and the BCA back in July, do you remember discussing the prone position?

A. I'm sure we covered it. Again, I don't recall the specifics of the meeting.

Q. Okay. Let me just step back then. In your experience and training, you're aware what the prone position is, correct?

A. Correct.

Q. Is the prone position in your training and experience any more inherently dangerous than any other position in terms of inhibiting a person's ability to breathe?

A. So the answer to that is no, but that's not based on my training and experience because I don't, I don't treat living people and I don't restrain people. It's my understanding from the literature that the prone position in and of itself is not inherently dangerous.

Q. And you've reviewed a number of studies in that regard, correct?

A. Yes.
Q. And these studies are various ways where we try to quantify that position and other things that affect a person's ability to breathe, correct?
A. Yes.
Q. And you talked yesterday about a bellows effect. Do you remember that?
A. Yes.
Q. Could you explain that to me just so it's clear for me, please?
A. Bellows is kind of a common analogy we use to describe the motion of the chest. I think most people can picture what bellows do, and what I'm saying is, the chest cage expands like bellows, and that allows us to take oxygen in.

And when the bellows contract, when the chest cage contracts, it is pushing the air, the carbon dioxide, out of the lungs.
Q. And do you have an opinion based on literature review you've done if the bellows effect is inhibited by a person being in the prone position?
A. Again, this is my understanding as a pathologist. I'm certainly not a pulmonologist, but just being in the prone position my understanding it would not cause a clinically significant difference in one's ability to move the bellows.
Q. Okay. And again directing you back, pardon me,

directing you, but you had this email exchange which apparently occurred sometime in August with your lawyer and the federal prosecutor at that time, correct?

A. Correct.

Q. Okay. And afterwards did you have a meeting again with the Federal Bureau of Investigation and some federal prosecutors on August 18th, 2020?

A. Again, I don't recall specifically, but that sounds right.

Q. Okay. And I'm probably going to use this term incorrectly, but are you aware of the term tachyia?

A. Petechiae.

Q. I knew I was doing it wrong. Could you explain what that term is if you are aware?

A. Yes. In forensic pathology, pulmonary petechiae means tiny little blood spots that form on the whites of the eyes, on the inside of the eyelids and sometimes you can even see them showering a person's face and on the mucosa, the lining of the inside of their mouth.

In my world petechiae occur in a limited number of ways. One of those situations is when there's marked pressure put on the neck. What happens is, blood can get into the brain through the carotid arteries, but it can't get back out through the jugular veins, and so the pressure in the head builds up, and those little tiny blood vessels

burst, and that's why you see those petechiae.

There are other circumstances in which you can get them, but in the context of an asphyxial death, that's the general mechanism for petechiae.

Q. And would I be correct in assuming that because the blood can come into the head but can't get out, that's because of the compression that's being used?

A. The compression of the neck.

Q. Okay. And is this something we're commonly looking at or talking about in terms of a manual, or excuse me, a strangulation?

A. Correct, or a hanging as we discussed yesterday.

Q. Okay. And those are ways in which the neck is sort of encircled at the carotid arteries, and blood can't get out?

A. With the hanging, the carotid arteries are functionally encircled. As you mentioned with a manual strangulation, it is really more additional pressure right over the arteries. It doesn't have to be around the neck.

Q. And did you observe any petechiae in this case on Mr. Floyd?

A. No, I did not.

Q. Is that something you were looking for?

A. Yes.

Q. And I know I'm going to use this term wrong. A negative inference, is that a term you used yesterday or previously?

A. I think the term I used is pertinent negative.
Q. That's it. Can you explain again what that means, please, Dr. Baker?
A. Yeah. So as a physician, you have a differential diagnosis as to what may have happened to your patient or what the potential diagnosis might be, and so you do certain things on a physical exam to either prove or disprove one of your concerns.

So a pertinent negative is something that you would have expected to see if a particular diagnosis was correct, and because it's not, because that finding is not there, that becomes pertinent because now that goes against that diagnosis that makes that diagnosis less likely because of what you expected to find was not there.
Q. Okay. And relevant to this case, did you observe any petechiae in Mr. Floyd?
A. I did not.
Q. And what, if any, significance did you attach to that particular negative inference?
A. It, the lack of petechiae, is just a strike against the hypothesis that his airway or more specifically the blood vessels in his neck were actually being compressed. Now petechiae are not 100 percent diagnostic. The presence or absence of petechiae is never actually diagnostic, but it does go against the pressure on his neck compressing

critical vessels.
Q. And then, Dr. Baker, you were called to testify in front of what's called a grand jury on August 20th of 2020; is that correct?
A. Yes.
Q. And this is a, excuse me, a room somewhere in a federal courthouse, correct?
A. Yes.
Q. And was your legal representation there when you testified on August 20th of 2020?
A. She was in the building, but she was not in the courtroom.
Q. Okay. And do you remember testifying that anatomically you didn't have any evidence of trauma to the front of Mr. Floyd's neck?
A. Correct.
Q. And do you remember testifying that anatomically pressure on the back, and I want to make sure this is clear, back or back side of Mr. Floyd's neck would not cut off an airway or compress the arteries?
A. Correct.
Q. What did you mean when you testified to that, just so it's clear to everyone?
A. So when we talk about the anatomy of the neck, we're talking about the trachea, which is right here in the

middle. It's right behind your Adam's apple. For any of you who only check your carotid pulse, you know your carotid artery is right next to the trachea on either side.

So when I talk about the pressure on Mr. Floyd's neck not affecting those, I'm talking about this area right here (indicating).

In my opinion the pressure applied to the back of Mr. Floyd's neck, as evidenced on the videos, would not explain how these structures would be compressed. When we do an autopsy, we meticulously lift the skin off the neck, and we dissect every one of the individual muscles that lives under the skin on either side of the trachea because we're looking for bruises on those muscles because that would be indicative of pressure to the front of the neck.

We very carefully look at the thyroid cartilage, which is your Adams apple, the pie shaped thing here, and the hyoid bone, the little U shaped bone. We look very carefully at those for fractures because if those are fractured, that would be indicative of pressure to the front of the neck, and that would support a concern that someone's blood supply to their brain had been cut off or their trachea had been compressed shut.

Q. And there was no such evidence that you found in your examination of Mr. Floyd; is that correct?

A. That's correct.

Q. And you also performed, I don't want to use the word unusual, but a particular medical procedure where you looked under the skin of Mr. Floyd from his neck all the way down his back; is that accurate?

A. That is correct.

Q. Could you explain what you did and why you did that, Dr. Baker?

A. Yes, this is going to sound a little bit graphic, but on many deaths in custody we want to make sure we don't miss any occult trauma and occult trauma means stuff you can't see on the outside of the body with the naked eye. You've got to look under the skin.

And so to do that I make an incision all the way from the back of the head down the entire length of the back and down both buttocks. And then with that incision, I take a blade and cut underneath the skin all the way out to the sides of the neck, all the way out to the shoulders, all the way out to the flanks.

And so basically you've seen every square inch of that individual's skin from underneath, because you already did it from the front with the traditional autopsy. Now you're doing it from the back, and the whole point of that is, you don't want to miss bruises that you couldn't see with the naked eye from the outside.

And those bruises are not just in the skin. You

are also looking for those bruises in the fat in the muscles that live right underneath the skin because it is often much easier to see underneath than from the outside.

Q. You talked about various factors that can affect bruising, but in essence you were trying to get as much medical evidence of what either was there or wasn't there in terms of any bruising, correct?

A. Correct.

Q. Was there any bruises found in that examination?

A. With regard to Mr. Floyd's back, no.

Q. Okay. Now, when you testified in front of the grand jury, you talked about the phrase "I can't breathe," not specific as to Mr. Floyd but about this particular sensation.

Do you recall that?

A. I don't recall the specifics of that.

Q. Okay. When someone is saying they can't breathe, is that a sensation that could be caused by perhaps more than one thing?

A. Again, with the caveat that I'm not a pulmonologist, yes, I can picture several scenarios where a person would feel they couldn't breathe.

Q. Would one of those be the toxicological status of a person?

A. I would probably defer that question to a toxicologist.

I'm not sure what the side effects would be in an awake, conscious person where a drug could cause that sensation. I would punt that to a toxicologist.

Q. Okay. And then would another thing that could cause that sensation be what's referred to as a cardiac event?

A. Yes.

Q. And again I don't want to use an inappropriate term. When the term "cardiac event" is used, what does that mean to you as a doctor?

A. That's kind of a catchall term for a variety of cardiac questions. To answer your question specifically, if you have bad coronary arteries and your heart is being ischemic, meaning your heart muscle is not getting enough oxygen, you may start to exhibit the classical signs of a heart attack, and one of those signs could be the inability to breathe or the perception that you can't catch your breath.

Q. Okay. And in this case you've reviewed the officers' body-cam videos, correct?

A. Yes.

Q. That depicts the struggle that was going on inside of Squad 320, correct?

A. Yes.

Q. Do you recall hearing Mr. Floyd say that he couldn't breathe during that point in time?

A. Yes.

Q. And that is prior to any of the restraint occurring while he's on the ground?
A. Yes.
Q. Prior to any of the officers being on top of him?
A. Yes.
Q. Is it possible that at that point Mr. Floyd was experiencing sensation because of a cardiac event?
A. I can't say one way or the other, but it is possible.
Q. And when you say you can't say one way or the other, can you explain why, Dr. Baker?
A. The only way you'd be able to know that in a person in real time would be if it occurred in a controlled setting where you had an echocardiogram and you can see the electrical impulses in the heart, you can see the ischemic changes. That does happen in a medical setting, and that's how we know it's occurring.

There's obviously no way I can know that in Mr. Floyd's case. All I can say is exhibits at least an anatomic substrate for that possibility and that being his coronary arteries.

Q. I would like to reference back to what you just said. Are you familiar with what's referred to as a stress test?
A. Yes.
Q. Can you explain that, please?
A. Again, I'm a pathologist, not a cardiologist, but if a

cardiologist suspects a person might have serious coronary artery disease and they would like to unmask that to prove the person has it, one of the easiest ways they can do it is to put the person on a treadmill wearing an EKG while they're doing it.

And I only know the basics of this, because I've never had one, but you're essentially trying to stress that person's heart just enough to trigger those EKG changes so you know they have coronary artery disease. And then your next step is to have that person get an angiogram and some kind of intervention if the stress test turns out to be positive again.

That's a pathologist's understanding how the stress test works.

Q. Sure. But going to Mr. Floyd, again, the reason we don't know what was going on essentially in his heart is because he wasn't set up with an EKG test. Is that the term?

A. They're just little patches you actually stick on a person's skin.

Q. Okay. To monitor the activity in his heart, correct?

A. Correct. There's no way that could be happening in the real world.

Q. Okay. In other words, perhaps Mr. Floyd could have been dealing with the cardiac event at that point, but there's no

way to know?
A. It's possible, but there's no way to know.
Q. Now, by the way, Dr. Baker, you made a couple references during that last line of questioning referring me to a different outside specialist; is that correct?
A. Correct.
Q. Okay. I think you referred to a cardiologist and a toxicologist, correct?
A. Correct.
Q. Now, I've looked at a transcript of your testimony in front of the federal grand jury on August 20th, 2020. In your first grand jury testimony, I only noted one instance when you made a reference to an outside specialist. Would that be accurate?
A. That sounds about right, yes.
Q. And I believe that was when you reached out to someone to consult about this sickle cell trait. And again I don't want to use the wrong terms, but is that what you referred to?
A. I don't recall the specifics of how I came to mention an outside expert in my first grand jury testimony, but I definitely did when assessing Mr. Floyd's sickle status.
THE COURT: Excuse me. Excuse me. We have to take a recess.
We're in recess. The jury can be excused.

(Recess taken at 10:54 a.m.)

* * * * *

(11:10 a.m.)

IN OPEN COURT

(JURY PRESENT)

THE COURT: Proceed. Counsel, proceed.

MR. ROBERT PAULE: Thank you, Your Honor.

BY MR. ROBERT PAULE:

Q. To reorient ourselves, Dr. Baker, I think I was talking about your inquiry or your statement when you were testifying in front of the grand jury in August of 2020 about seeking information from a different specialist.

I think if memory serves, that was about a sickle trait, if I'm using the right word.

A. Again I don't recall what specialist I referenced in that particular testimony, but I will take your word for it. And I did in fact consult a hematopathologist briefly to look at one slide from Mr. Floyd's blood taken when he was alive.

Q. And again, you testified yesterday about that particular finding. You don't find any medical significance with regard to Mr. Floyd's cause of death, correct?

A. Correct. I would not imply that sickle cell trait played any role in his death.

Q. And likewise the same thing with Mr. Floyd's COVID diagnosis, correct?

A. Correct.

Q. Okay. Thank you. And then, Dr. Baker, did you later have a meeting in December of 2020 with a number of state court prosecutors?

A. Again, I don't recall the date specifically, but yes.

Q. I believe Keith Ellison was there. Does that ring a bell?

A. Yes.

Q. Okay. Do you remember on that one discussing an injury to the inside of Mr. Floyd's lips that you found during your examination of him?

A. I don't specifically recall that discussion, but Mr. Floyd did in fact have injuries to the inside of his lips.

Q. Okay. And do you know, can you tell us about that injury first, Dr. Baker?

A. Well, I don't have the photos with me, so I'll just have to describe it, but one of the things we do during an examination like Mr. Floyd's is, we actually lift the lips up and look at the inside of them because there is injuries that could be in the inside that you can't see just by looking at someone's face.

My recollection is, Mr. Floyd had some patterned injuries on the inside of his lips that more or less resembled the teeth that would be right underneath at that part of the lip.

Q. Okay. And you also testified that when you first examined Mr. Floyd, any medical intervention was essentially left in place, correct?
A. Correct.
Q. And you talked about Mr. Floyd being intubated; is that correct?
A. Correct.
Q. And again so the jury knows, this is where there's a device put down a person's throat to try to assist them in breathing, correct?
A. Yes.
Q. Do you know the source of the injury on the inside of Mr. Floyd's lips?
A. No. I would deem them nonspecific. They could be from blunt trauma. They could be as a result of medical intervention.
Q. And do you remember also during that meeting talking about a scar on Mr. Floyd's left clavicle?
A. I don't specifically recall that, no.
Q. Let me back up, Dr. Baker. When you are doing this meticulous physical examination of the patient you are dealing with, you are looking for any signs of any scars, correct?
A. Within reason. I mean there are some scars that are so small they might not have any relevance, but generally we

are going to document any scars.

Q. And I assume as a forensic pathologist you deal a lot with gunshot wounds?

A. Yes.

Q. And are you also familiar in your practice and your training and experience in diagnosing scars that appear to be from bullet wounds?

A. I would say that by the time an injury has reached the point where it's a scar, I would not be able to tell that it occurred from a firearm injury or not.

Q. In your examination of Mr. Floyd's body, did you find any scar consistent with a bullet hole?

MS. TREPEL: Objection. Relevance.

THE COURT: It's overruled. You may answer.

THE WITNESS: Again, I'll fall back on the same answer, which is by the time it's a scar, I really couldn't say what it's from.

BY MR. ROBERT PAULE:

Q. And you don't recall what your statements were when you met with the state prosecutors back on January 9th of 2020?

A. I don't.

MR. ROBERT PAULE: May I have just a moment, Your Honor?

THE COURT: You may.

BY MR. ROBERT PAULE:
Q. Dr. Baker, would it refresh your recollection of the meeting you had with the state court prosecutors on December 9, 2020, to look at a summary that was created by their investigators, the BCA agents?
A. It might.
MR. ROBERT PAULE: And for counsel's reference, it's Bates 040655.
Your Honor, may I approach the witness?
MS. TREPEL: Your Honor, I'm going to object at this point to form. I'm not sure that there's any question pending to refresh Dr. Baker's recollection of.
THE COURT: Because there's been an answer of something that wasn't recalled, so you can show it to him.
BY MR. ROBERT PAULE:
Q. Does that refresh your recollection to some degree?
A. Not really. I mean, I'm not the author of this document. This is somebody paraphrasing what they thought they heard me say. I'm speaking medical. This is not a medical person transcribing this, so I don't know that this accurately reflects exactly what I said.
Q. Okay. You don't recall exactly what you said, and that document does not refresh your recollection?
A. No. I mean, in the overall scheme of things as I'm trying to understand how Mr. Floyd passed away, a scar over

his left clavicle is not going to get a lot of attention from me.

Q. Dr. Baker, do you also recall during that meeting discussing the what's called I think edema? Am I using that term correctly?

A. Yes.

Q. And again just to orient the jurors, what does that term mean?

A. Well, edema generally is fluid that builds up in any body tissue or organ. I think you are probably specifically referencing Mr. Floyd's pulmonary edema, which is fluid that has built up in the lungs.

Q. Okay. And I believe you testified that you saw that present in Mr. Floyd, correct?

A. Correct.

Q. And that there are multiple potential causes for that; is that correct?

A. Yes.

Q. One of them is resuscitative efforts, including CPR; is that correct?

A. Correct.

Q. Does fentanyl also sometimes play a role in edema?

A. Yes. All opioids, including fentanyl, can cause significant pulmonary edema as one of their side effects leading to death.

Q. Okay. And does that in turn act the rigidity of the chest wall?
A. The pulmonary edema.
Q. Yes, or edema. Yes.
A. I'm not aware that pulmonary edema would have any effect on the rigidity of chest wall. Again, a pulmonologist may know better.
Q. All right. And then following that interview in December of 2020, were you given some more video evidence by agents from the Bureau of Criminal Apprehension in January 28th of 2021?
A. I don't recall.
Q. And, Dr. Baker, you've talked about viewing the body-cam footage, the Cup Foods video and some of the social media; is that correct?
A. Correct.
Q. Were you also provided video from Hennepin County Medical Center?
A. Yes.
Q. Can you tell the jurors what you remember being provided by them or of that particular -- of Hennepin County Medical Center? I'm phrasing it very poorly.
A. Yeah. So again, this is me not as a Hennepin County Medical Center employee and certainly not as an ER physician, I believe they have cameras running in the

emergency room for all of their codes. I think it's for teaching and quality assurance purposes.

And that happened to be available on Mr. Floyd's case and was made available for me to be able to watch. I watched it once at most. My only concern was, I just wanted to make sure that nobody actually gave Mr. Floyd fentanyl in the emergency room because it is sometimes used as an emergency drug.

Now there's nothing in his medical records to suggest that ever took place, and there was nothing in that video to suggest that anybody verbally authorized it. Beyond that, I really wouldn't know much of what I'm seeing in that video because I'm not an emergency room doctor.

Q. Were you also provided video from inside of the ambulance from Hennepin County Health Care?

A. I don't specifically recall. And if I watched it, I certainly don't recall it ever changing any of my opinions on the case.

Q. And then, Dr. Baker, do you remember testifying a second time in front of the federal grand jury on February 18th of 2021?

A. Yes.

Q. And again this was in a federal courthouse, correct?

A. Correct.

Q. And your attorney was somewhere in that building; is

that correct?
A. Yes.
Q. And you were actually questioned by Ms. Trepel, who did the direct examination of you here in this courtroom; is that correct?
A. Yes.
Q. Okay. And you indicated that at that point you created a what's called hierarchy from most immediate to underlying, and those may be my terms, but I'm talking about the cause of death?
A. Yes.
Q. Okay. And again, could you go through and is hierarchy your term, or did I just kind of make that up?
A. We use the phrase "cause of death hierarchy" as a term of art all the time in pathology. It refers to those four lines I drew yesterday on a death certificate, where you point out the immediate cause of death due to this, due to this, due to this.

There is actually four lines depending on how verbose you need to be in painting an accurate picture of how that person died.
Q. And again the first line on that hierarchy is the cardiopulmonary arrest complicating law enforcement subdual restraint and neck compression; is that correct?
A. Correct.

Q. And then the second was the heart disease?
A. No. So on Mr. Floyd's death certificate, the cause death hierarchy, I only used the first line. It's the cardiopulmonary arrest due to.

All of the other conditions that I described were placed on what's called the other significant conditions or contributing conditions section of the death certificate.
Q. Okay. And there's actually two different types of heart disease that you observed in Mr. Floyd; is that correct?
A. Yes. Different, different but typically interrelated heart diseases.
Q. Okay. And again, could you please describe those for the jury?
A. Yes. So Mr. Floyd had what we call arterial sclerotic heart disease. That is hardening and narrowing of the coronary arteries. Mr. Floyd also had hypertensive heart disease, which means due to some long-standing history of high blood pressure, his heart was somewhat enlarged and a little bit dilated.

There's also features you can see under the microscope that correlate with that, so those were his two heart conditions, hypertensive heart disease and arteriosclerotic heart disease.
Q. And if I understand correctly, those act in combination to put him in a more vulnerable or fragile condition,

correct?
A. Yes. All other things being equal, that would put your heart at risk for deleterious things to happen if you are stressed.
Q. And just so I'm clear, the hypertensive heart disease means that because he has essentially high blood pressure, his heart has had to work harder over a period of time, and since it is a muscle it has gotten bigger, correct?
A. Correct.
Q. And that creates the need for this particular heart to get more oxygen at certain times than a normal sized heart would be, correct?
A. Correct.
Q. And then the other part of the heart disease is the narrowing of those three arteries insides Mr. Floyd's heart, correct?
A. Correct, although he only had narrowing in two of the arteries.
Q. Excuse me. Is one of them called a branch?
A. Yes.
Q. So there were three measurements made of the coronaries inside Mr. Floyd's heart, correct?
A. I believe there might have been more than three, but the arteries that were affected were the left anterior descending. The branch that you just mentioned, which is

the first diagonal and, then his right coronary artery.

My recollection is his circumflex, which we typically regard as the third of the three coronary arteries, did not have significant disease.

Q. And is the idea that because these arteries are narrowed, it makes it harder for blood to get through to a heart that already needs more oxygen because it is bigger?

A. Correct.

Q. And in this case when you testified in front of the grand jury, you made references to a number of other subspecialties of medicine, correct?

A. I recall two specifically. There could be more in there.

Q. A pulmonologist?

A. Yes.

Q. And an emergency room physician?

A. Yes.

Q. And I if told you I went through your transcript and found references to a pulmonologist eleven times, does that sound accurate?

A. That could be, yes.

Q. And an emergency room physician 16 times. Excuse me. Five times. Pardon me.

A. Again, I'll take your word for it, Counselor.

Q. Let's go through the math again just so I'm not screwing

anything up.

I told you I found eleven references to a pulmonologist. Does that sound accurate?

A. Again, I have not been able to do a word search on the transcript, but I will take you at your word.

Q. And then five other times where you made a reference to an area that might be better suited by an emergency room physician.

A. Again I don't recall specifically, but I'll take you at your word.

Q. Okay. And then during that grand jury testimony, is one of the things you made a reference to an emergency department physician be about the topic of excited delirium?

A. I don't, I don't honestly recall that coming up during the grand jury, but if it had I can easily picture myself saying that an emergency room specialist would have more expertise in recognizing that and treating it than I would.

Q. Would it refresh your recollection to look at a copy of your grand jury testimony from I believe it's February, February 18th of 2021?

A. Yes.

Q. And a page reference to be 00037505. And I think what that means for your purposes, Dr. Baker, would be page 54.

May I approach the witness, Your Honor?

THE COURT: You may.

MR. ROBERT PAULE: Thank you.

BY MR. ROBERT PAULE:

Q. Does that refresh your recollection?

A. It does.

Q. Did you make a specific reference to an emergency department physician being better placed than you would be to opine on the topic of excited delirium?

A. I did.

Q. Did you also refer to something in your grand jury testimony as a white paper on excited delirium?

A. Yes.

Q. Can you explain what that is, please?

A. I don't know specifically what the term "white paper" means in the context of a medical publication. I just know that the American College of Emergency Physicians put one out on this specific topic in 2009.

I have, I have read it in the past in relation to other cases, and so I happened to have a copy on my computer and was aware of it.

Q. Okay. Now, Dr. Baker, with the court's permission, I'd like to approach and show you something marked for identification only as Exhibit T-17.

And I have a copy for the court as well, counsel -- or excuse me, Your Honor.

May I approach the witness?

THE COURT: You may.

MR. ROBERT PAULE: Thank you. Dr. Baker, is that the white paper that you were referring to? Is that a copy of it.

THE WITNESS: It is.

BY MR. ROBERT PAULE:

Q. Okay. And does that fairly and accurately represent the document you referenced having on your computer?

A. Yes.

Q. And specifically that was something you reviewed to essentially educate yourself or to review literature, at least, on the topic of excited delirium?

A. That and to confirm that emergency room physicians are really the people that would be on the front lines seeing this and treating it, yes.

MR. ROBERT PAULE: Okay. Your Honor, I would offer I believe it's T-17.

MS. TREPEL: Your Honor, I'd object to admitting the whole 20-page white paper into evidence. I think certainly Dr. Baker has said he --

THE COURT: Counsel, we're going to have to go on sidebar. I'm not able to hear you.

(At sidebar)

MS. TREPEL: Your Honor, this is an -- is everyone on?

I'll just turn away from the jury slightly. Can everyone hear me now?

Okay. This is Sam Trepel for the government. Your Honor, we're objecting to the entry of this exhibit into evidence. Dr. Baker has said it's a 20-page medical treatise from a different medical specialty that Dr. Baker has said he's not an expert on this topic, and the actual document is hearsay.

So I think he can be certainly questioned about it, but I would object to it coming into evidence.

MR. ROBERT PAULE: Your Honor, Robert Paule. This is a document that Dr. Baker has testified that he has reviewed and used for part of his training and review of the literature on this syndrome, which he has testified to.

It's also part of the basis of why he indicated that it would be better referred to an emergency room physician. It forms the basis for that opinion.

MS. TREPEL: And because of that, Your Honor, I believe that it is entirely appropriate to question Dr. Baker about it, but because he has -- it's just hearsay from another medical specialty. I don't think it's appropriate to admit all this hearsay into evidence.

THE COURT: Well, counsel, it seems to me that the witness has indicated that he has reviewed this document and referred to this document. It does in fact refer to

emergency room physicians, that's correct, but at the same token, it's within the quantum knowledge of the witness who has given a number of opinions on a number of subjects.

So I'm going to overrule the objection and receive T-17.

(In open court)

THE COURT: The exhibit is received.

BY MR. ROBERT PAULE:

Q. Now, Dr. Baker, that T-17, the exhibit in question, that's a white paper that you just described about the syndrome excited delirium syndrome, correct?

A. It is.

Q. Do you have a working familiarity with that particular syndrome?

A. I believe I answered that earlier this morning, and I probably even used the phrase "working familiarity."

Q. Okay. And is that something that you in your capacity as a medical examiner, or broadly a forensic pathologist, feel like you should be aware of because that could come into play in your practice?

A. Yes.

Q. Okay. But again you feel like questions about that particular syndrome are best referred to an emergency room physician, correct?

A. Yes.

Q. Okay. Now, Dr. Baker, towards the end of your testimony in front of the grand jury on February 18th of 2021, you were asked a question specifically about whether anyone has tried to pressure you or influence you to say anything other than the truth; is that correct?

A. Yes.

Q. Specifically, the question said: Dr. Baker, has anyone involved in this case, including anyone from the Minneapolis Police Department --

MS. TREPEL: Objection. Hearsay. He's reading the statement into the record at this point without the question.

THE COURT: Yeah, I sustain. I think reading that question at this point would be inappropriate.

MR. ROBERT PAULE: Okay.

BY MR. ROBERT PAULE:

Q. Dr. Baker, you recall that question being posed to you, correct?

A. You didn't -- what question are you referencing, counselor?

Q. I didn't finish. I apologize. I believe you have the document in front of you.

A. Oh, I'm sorry.

Q. And I apologize, Dr. Baker.

Would it refresh your recollection about what

specific question you were asked?

MS. TREPEL: Your Honor, again, this pattern of reading a question and asking about a hearsay statement that was made earlier without there being a question, I object to.

THE COURT: Counsel, it may be hearsay, but it may not be hearsay. It depends on what we're talking about, and I think we're got to get to the witness and refresh that recollection, and then we'll make that hearsay determination.

MS. TREPEL: Yes, Your Honor. I was just asking for Mr. Paule to first propound a question before there's something to refresh about. That's all I was trying to clarify.

THE COURT: Okay. Go ahead and do that.

BY MR. ROBERT PAULE:

Q. Do you recall the exact question posed to you by Ms. Trepel when you testified in front of the grand jury on February 18, 2021, about whether anyone had tried to pressure you or influence your testimony?

A. I do not recall the question. I recall the question being asked, definitely. I don't recall the exact wording of the question.

Q. Would it refresh your recollection to look at a copy of your grand jury testimony from that date?

A. Yes.
Q. Okay. And I would direct your attention, Dr. Baker, to page 58 of exhibit, excuse me, of that document at Bates 00037509.
A. Okay.
Q. Does that refresh your recollection?
A. It does.
Q. Can you tell the jury exactly what question was posed to you?
A. I can read it verbatim.
Q. Please.
MS. TREPEL: Objection to reading it verbatim. Hearsay.
THE COURT: Overruled.
THE WITNESS: This is by Ms. Trepel: "Dr. Baker, has anyone involved in this case, including anyone from MPD or the government, pressured you or influenced you to say anything other than the truth here today?"
BY MR. ROBERT PAULE:
Q. And what was your response to that question being posed to you?
A. I answered, "Can I take a break and speak with counsel?"
Q. And what was the time that you asked to take a break and speak with counsel?
A. It says, "Witness leaves the room from 10:12 a.m. to

12:18 a.m.," which is obviously a typo.

Q. So it's a period of just over six hours -- excuse me -- just over two hours and six minutes, approximately, when you returned to that room to answer that question?

A. No, counselor, that's incorrect. If you look at the end of the transcript, you can see that the deposition or, sorry, the grand jury ended at 10:21 a.m.

Q. Okay. Let me ask you a question. Did you go out and speak with your counsel with respond to that particular question?

A. Yes, apparently for no more than nine minutes.

Q. Okay. And what was your answer when you returned back and read that same exact question?

A. My answer was, in response to the question have you been pressured by any of these various agencies, my response was, "No."

Q. Now to be accurate, a number of people have through various means tried to, I assume, show their feelings towards your work in this case, correct?

A. I think you're going to have to be a little bit more specific, counselor.

Q. Certainly you received, your office has received, lots of harassment about your work in this case, correct?

A. Correct.

Q. And you testified to threats being made to your staff?

A. Yes.
Q. And threats being made to you?
A. Yes.
Q. What would you assume those people are doing that for?
A. I don't know. I didn't listen to most of the incoming phone calls. I don't know the answer to that.
Q. Okay. But, again, being threatened, I think you indicated that happened at one point previously in your career, correct?
A. Correct.
Q. If you have any idea, how many threats do you think you received with regard to your work in this case?
A. Me personally or my office?
Q. Both.
A. I'm sure it was in the hundreds, if not more. I mean, there were days when the phone was ringing off the hook around the clock.
Q. And some of these threats were very specific, without going into any more detail; is that accurate?
A. I believe so, yes. My very stoic and very intrepid staff did an excellent job of insulating me from a lot of that.
Q. Good. And as well, Dr. Mitchell spoke with you and indicated he was going to write an op ed piece critical of your findings, correct?

A. Again, I don't recall specifically what Roger's wording was. That was a phone call 18 months ago, but that might be the gist of it.

Q. Okay. And your reappointment, you had some of the county commissioners specifically vote against you as a result of your work on this case correct?

A. I don't recall the rationale for both of them, but at least one of them I think articulated it being directly related to this case, yes.

Q. And I'm just going to put it to you, sir, because you know best. Has anyone influenced you or pressured you to say anything other than the truth here today about your work with Mr. Floyd?

A. No.

MR. ROBERT PAULE: Okay. Thank you very much, Dr. Baker. I don't have any further questions.

THE COURT: Thank you.

Mr. Plunkett, anything?

MR. PLUNKETT: Yes, Your Honor.

THE WITNESS: Counselor, do you need your documents back?

CROSS-EXAMINATION

BY MR. PLUNKETT:

Q. Good morning, Dr. Baker.

A. Good morning.

Q. My name is Tom Plunkett. I think we've met before.
A. Yes.
Q. And very few questions for you, if I may.
A. Okay.
Q. Thank you. Dr. Baker, you have seen the body-worn camera videos, correct?
A. Yes.
Q. And you watched the body-worn camera videos and the by-standard videos, correct?
A. Correct.
Q. And I believe when you watched the various videos, your purpose was to figure out what happened to George Floyd?
A. Part of it, yeah.
Q. Okay. I'm going to display a screenshot from what's called Exhibit No. 5, which is a body-worn camera video of Mr. Lane, and it's a demonstrative exhibit, so it won't go into evidence, but I just want to for your benefit it is demonstrative 6-W.

Just for the purposes of orientation we see a handcuff, and that's Mr. Floyd's right hand. And after that we see a knee, and in front of that we see a black glove, and we see Officer Chauvin is wearing that black glove. And the right knee is Mr. Kueng's right knee. Fair enough?
A. Yeah. I mean I don't know who Mr. Kueng is. I know who Mr. Chauvin is, so I'll take your word for it.

Q. Okay. Mr. Kueng is my client.
A. Right. No. I get that, but I can't tell that by looking at the picture.
Q. Okay. Well, he just -- you've seen other portions of the video, and there were three people, and there's one in the middle?
A. Yes.
Q. This screenshot is from the third person looking forward, so the knee belongs to the person in the middle. Fair?
A. Okay.
Q. All right. It's your opinion having watched the videos is that Mr. Kueng's right knee above the waist or the buttocks did not have any significant impact on Mr. Floyd's death?
A. I'm sorry. Could you repeat the question?
Q. It was my understanding that your opinion having watched the videos is that Mr. Kueng's knee above the waist or the buttocks did not have a significant impact in this case?
A. Just for clarification, are we talking about Mr. Kueng's right knee?
Q. Yes.
A. And that's this right here (indicating)?
Q. Yes, it is.
A. Okay. I'm not sure that's entirely -- you said above

his buttocks or his waist. I'm not sure it's actually even that high on Mr. Floyd's body.

Q. It's lower, isn't it?

A. As best as I can tell from this photograph and knowing what Mr. Floyd was wearing at the time, it appears to me that it may be below the crest of his buttocks, maybe even on the back of his thigh.

Q. And I wouldn't dispute you on that. I think that's accurate, but the point of the question is that Mr. Kueng's position didn't have a significant impact on Mr. Floyd's death?

A. I think the original question posed, not by you, counselor, but in the context it was first asked was, would this be impairing Mr. Floyd's ability to breathe, and my answer would have been no.

As a pathologist, I wouldn't be able to come up with a mechanism where pressure on your buttock or your thigh would impair your ability to breathe.

Q. Okay. Would that be the same as saying no significant impact?

A. Correct.

Q. Okay. You met with the defense counsel, three of the defense attorneys, on January 22nd. Do you recall that?

A. Yes.

Q. And thank you for your time, by the way.

A. Of course.
Q. During that meeting you shared that the hands cuffed behind Mr. Floyd's back would not impair his ability to breathe unless they were held above his lungs; is that correct?
A. That would be my understanding as a pathologist, yes. I wouldn't be able to come up with a mechanism for where they are located in this picture impairing someone's ability to breathe.
Q. Okay. Again, no significant impact, correct?
A. In my opinion as a pathologist, yes.
Q. Thank you. You told us that you have no particular skill interpreting videos, but that common sense would support the fact that the weight on Mr. Floyd fluctuated as Mr. Chauvin and Mr. Floyd moved around. Agreed?
A. Yes.

MR. PLUNKETT: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Gray.

MR. GRAY: Thank you.

CROSS-EXAMINATION

BY MR. GRAY:
Q. Good morning, Doctor.
A. Good morning.
Q. Earl Gray. I think we may have met before. I don't

remember.
A. I believe we have a few times over the years.
Q. I just have one question. From looking at the video and listening to the audio of the video, is it your opinion that my client Thomas Lane's position on George Floyd had no relation to the cause of death of George Floyd?
A. Could you remind me of your client's position?
Q. Yes. He was down by the feet.
A. Okay. So with regard to Mr. Floyd's ability to breathe, as a pathologist I would find that position completely unrelated to impairing Mr. Floyd's ability to breathe.
Q. Okay. Thanks, doctor.

MR. GRAY: That's all I have, Your Honor.

THE COURT: Thank you.

Ms. Trepel.

MS. TREPEL: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. TREPEL:
Q. All right. Dr. Baker, you were asked a series of questions by Mr. Paule about potential effects that various threatening and harassing calls that you received or other means of public pressure had on you. Do you remember those questions?
A. I do.
Q. All right. First of all, I want to focus on the role of

doctors that you may have consulted with or spoken with. All right? So, first, how typical is it for you to consult with another doctor or medical examiner when you are conducting a death investigation?

A. Well, I'm very fortunate because I have a staff of eight pathologists that -- seven at the time Mr. Floyd passed away, but we've expanded to eight, and so we commonly frequently consult with each other all the time on cases. I'm lucky to have that collective experience in my office.

Q. And so did you consult with anyone in this case?

MR. ROBERT PAULE: Objection. Calls for hearsay, Your Honor.

THE COURT: I'll overrule. You may answer.

THE WITNESS: So, yes, because as a matter of policy all homicides in our office are thoroughly reviewed by a second pathologist before that report can be signed and released. So that's an automatic keyway mechanism. I would say virtually every death in custody in the recent past, the pathologist responsible for that actually presents it to the entire team for discussion, for input, is there anything here I missed, is there anything here I should have done differently. That is routine in our office, and that took place in Mr. Floyd's case.

BY MS. TREPEL:

Q. And how large is that entire team?

A. Again, at the time it was seven staff pathologists, including me.

Q. And what was the result of that consultation?

MR. ROBERT PAULE: Objection. Calls for hearsay.

THE COURT: No. It's overruled.

THE WITNESS: Well, the ultimate answer to your question is it's what you saw on the death certificate and it's the final signed autopsy report, which also indicates it was QA'd under my signature block.

BY MS. TREPEL:

Q. And when you say "QA'd," what do you mean by "QA?

A. Quality assurance.

Q. Did any other consultations with other medical professionals cause you to alter your opinion about the cause of Mr. Floyd's death?

A. No.

Q. Now, what about receiving of various threatening and harassing phone calls? Did any of that type of pressure change or alter your opinion about the cause of Mr. Floyd's death?

A. It did not.

Q. Now, I think you were also asked some questions about releasing partial information about an autopsy before you get all of the lab results and that type of information back? Do you remember those questions?

A. I do.
Q. Can you explain why is it you don't release partial information?
A. Well, we don't release partial information for several reasons. One is it may paint the wrong picture for what the ultimate conclusions turn out to be. The second is most of that information would be protected data under Minnesota statutes, and so I wouldn't be able to release it even if I thought it was a good idea.
Q. So what involvement, if any, did you have in any language about the autopsy before there was a conclusion being included in a criminal complaint?
A. Again, I had multiple meetings with the Hennepin County Attorney's Office, so they knew what the preliminary findings were as they were coming in in realtime. I don't write the charging documents, and I don't know how the decisions get made as to what does or does go in those.
Q. And did you have any input in the decision about whether to release that information in a criminal complaint?
A. No. That's completely a function of the legal system. I honestly don't know how that works.
Q. I think you were asked some questions about petechiae?
A. Yes.
Q. All right. So can you clarify, does the fact that you didn't see evidence of petechiae rule out the idea that

Officer Chauvin placed pressure on Mr. Floyd's neck?
A. No. As I testified earlier, petechiae can be suggestive of certain kinds of asphyxia. They can mitigate against certain kinds of asphyxia, but they are not a hundred percent accurate.
Q. All right. Now, you were asked a serious of questions about deferring to other medical specialties?
A. Yes.
Q. Can you explain why it is you defer to other medical specialties at times?
A. Sure. I often get asked questions that clearly pertain to phenomena that only occur in living people, whether it's measurements of pulmonary function, what you would be looking for on an EKG if a living person had a stress test, what forms of resuscitation would you use in different circumstances. Obviously, I'm going to defer to, A, the appropriate clinician for a better answer to questions like that.
Q. All right. And in this case did you refer the government to various medical specialties?
A. Yes. I specifically recall being asked multiple questions about various effects, different things would happen on a person's ability to breathe and gradations along that difficulty in breathing. And I said, to the effect, you know, a pulmonologist would be in a much better position

to answer a question like that.

Q. All right. I'm trying to reduce the number of questions as much as I can here. Pardon my moment to organize my thoughts. But now I think Mr. Plunkett asked you some questions based on that image he put up on the screen?

A. Yes.

Q. Do you remember that? So based on your review of the video, generally, could you determine whether or not officers were exerting enough pressure to keep Mr. Floyd pinned to the ground?

MR. GRAY: Object to that, Your Honor, as vague when she mentions officers.

THE COURT: No. I'm going to overrule. I think the witness has previously identified three people.

THE WITNESS: Would you mind repeating the question, counselor?

BY MS. TREPEL:

Q. If I can remember it, I will try. So based on your review of the video, the question was whether you could determine whether the officers were or were not exerting enough pressure to keep Mr. Floyd pinned to the ground.

A. So qualitatively the answer to that is yes. I mean, Mr. Floyd was not able to get up. I have no way of knowing as a forensic pathologist how much force that's requiring in that situation. There is nothing about being a medical

examiner that makes me any more gifted at reviewing videos than the average person. So I have no way to quantify the amount of force being used.

Q. Now, based on your -- well, let me ask you this. You testified a bit about, in response to defense counsels' questions, about stress, the stress that the police interaction was placing on Mr. Floyd. Do you remember those questions?

A. Yes.

Q. Is the duration of time that a person is under stress relevant to the effects that the stress has on a person?

A. I would assume so, yes, because as long as the stress continues and as long as the person is conscious, the stress hormones would continue unabated.

Q. Okay. And based on your review of the videos, in your opinion, was Mr. Floyd's decline sudden or did it occur over a period of minutes?

A. It certainly appeared to me that it went on over the course of minutes.

Q. And where was Mr. Floyd when you observed his decline occurring over a period of minutes?

A. He was on the ground.

MS. TREPEL: One moment, please. This is why one has colleagues. I forgot something.

BY MS. TREPEL:

Q. All right. Mr. Paule asked you some questions about excited delirium. Do you recall those questions?

A. I do.

Q. Now, I think in your testimony earlier you said something like you had previously used excited delirium on a death certificate before?

A. Over the course of 24 years I've been doing this, I've probably done it a handful of times. It's pretty uncommon, but I have used the term before.

Q. Did you place excited delirium on Mr. Floyd's death certificate as a cause of his death?

A. I did not.

MS. TREPEL: I have no further questions.

THE COURT: Thank you.

Mr. Paule.

RECROSS-EXAMINATION

BY MR. ROBERT PAULE:

Q. Dr. Baker, I think as I get older my hearing gets worse. Did I just hear that you have actually listed as cause of death on a death certificate excited delirium?

A. Either on the first line of the cause of death hierarchy or as a contributing condition, yes.

Q. All right. Thank you very much. No further questions.

THE COURT: Thank you.

Anything, Mr. Plunkett?

MR. PLUNKETT: Nothing further, Your Honor.

THE COURT: Mr. Gray?

MR. GRAY: No, Your Honor.

THE COURT: Anything further?

MS. TREPEL: No, Your Honor.

THE COURT: Okay. Thank you very much, Doctor. You may step down.

THE WITNESS: Thank you, Your Honor.

MS. BELL: Your Honor, can we have a sidebar?

THE COURT: Yeah, we can. I think we can probably have it out loud. Are you going to suggest we take our lunch break now?

MS. BELL: I am, Your Honor. You are a mind reader.

THE COURT: Okay. Well, I was going to suggest it if you didn't, so.

Okay. Members of the jury, when we came in earlier, I said we're going to be late for lunch. Now we're going to be early for lunch, but we will take it anyway. We're going to stand in recess at this time. We'll be in recess until 1:30 this afternoon.

The jury may be excused.

(11:54 a.m.)

IN OPEN COURT

(JURY NOT PRESENT)

THE COURT: Counsel, I understand that one of the jurors -- not jurors, one of the witnesses that you had lined up for this afternoon is ill. Have we made any contact there? Is that person going to be here or not?

MS. BELL: Your Honor, I'm not sure yet. I can let -- I can shoot out an email to the court and counsel as soon as I find out --

THE COURT: Okay.

MS. BELL: -- the circumstances and let the court know what I think the afternoon will look like.

THE COURT: Okay. That's fine. If we can fill it up, why, that's good; if we can't, that's the way it goes.

MS. BELL: Thank you, judge.

THE COURT: Okay. Let's break for lunch. See you at 1:30.

(Recess taken at 11:55 a.m.)

* * * * *(1:32 p.m.)

IN OPEN COURT

(JURY NOT PRESENT)

THE COURT: Counsel, I came in knowing that we have witness problems, but I don't know what the status is.

MS. BELL: Sure, Your Honor. So the witness who was going to be our first witness this afternoon is sick and

so will not be here today.

And so we are calling one witness who is in the building but is making his way up here. I think he's -- he's in the building, I know that, and making through security and et cetera and will be up here to start probably in the next five minutes, ten minutes.

THE COURT: Okay. He might be in the hallway now.

MS. TREPEL: He's in the hallway now.

MS. BELL: He's in the hallway now. So we are ready to start when the court is, but that will be our only witness for this afternoon. Our next witness is a doctor who is flying in and will be testifying tomorrow morning.

THE COURT: Counsel, you've got 40 some witnesses on your list, and many, many of those people are in the Twin Cities.

MS. BELL: Yes.

THE COURT: And somehow or other you've got to get these people on notice that you can bring them in out of order. When we've got this long a trial, we just can't afford to be down any more time than we have to, and I'll tell you flat out, the occupant of this chair before me, you would have rested today when you didn't have the witness.

MS. BELL: I understand, Your Honor. I apologize. I did not predict that we were going to have an illness this afternoon.

THE COURT: Of course you didn't, but you also knew it this morning, and there are other people that are in the metropolitan area. That's what I'm concerned about.

Anyway, we got the person. We're going to do what we have to.

MS. BELL: Judge, I will in the future make sure that I have a lineup.

THE COURT: Please do.

MS. BELL: Deeper, yes.

THE COURT: Please do.

If the witness is here, let's get the jury in and get started.

MR. ROBERT PAULE: Excuse me, Your Honor.

THE COURT: Mr. Paule.

MR. ROBERT PAULE: I would like to request that the jury be given a limiting instruction prior to this particular witness.

THE COURT: For what?

MR. ROBERT PAULE: It's my understanding that this witness is related only to Mr. Lane and not to either Mr. Kueng or Mr. Thao.

THE COURT: Ms. Trepel, is that true?

MS. TREPEL: Yes, Your Honor. Yes, Your Honor.

THE COURT: Okay.

MS. TREPEL: That's true. And related to that,

and I discussed this with counsel at various points, there were four exhibits on our exhibit list that were not part of the stipulation because I believe counsel wanted to make, wanted to include the exhibits in that limiting instruction.

And I would offer into evidence those exhibits as to Mr. Lane now.

THE COURT: Okay. And those exhibit numbers are?

MS. TREPEL: Yes. Those are Exhibits 92 through 96.

THE COURT: Do I hear objections to 92 through 96?

MR. GRAY: I'm just going to take a look at them, Your Honor.

THE COURT: Okay.

MR. GRAY: I apologize. It will just be a minute.

MR. ROBERT PAULE: Your Honor, and on behalf of Mr. Thao, I would just simply make a relevance objection for the record and ask for a limiting instruction.

MR. GRAY: Your Honor, the exhibits, the only objection I have actually to this witness, too, his name is Christopher Douglas. He was the trainer in 2017 when Thomas Lane was a correctional officer.

And I don't know the materiality or the relevance of him coming in here and saying that he trained Tom Lane. In fact, I would stipulate that he went through training when he was a corrections officer. It's not that big of a

deal to me.

If they want to prove he was a correctional officer in 2017 and went through training, what does that prove about knowing that George Floyd was seriously in medical needs? None.

MS. TREPEL: Your Honor --

THE COURT: What's the relevance of this witness?

MS. TREPEL: The relevance is, the trainer is going to explain the content, very briefly, that Mr. Lane received in terms of his training on positional asphyxia and the duty to intervene. It goes to his willfulness, which is an element that we have to prove.

THE COURT: Counsel, how can that possibly be relevant when it's a completely different position involving a different organization?

MS. TREPEL: Because what matters is in Mr. Lane's head, and so when he -- if he knew that he had a duty to do something to provide medical care, to turn a person onto his side, no matter where he learned that, that is relevant to his willfulness.

THE COURT: Counsel, that's what he tried to do.

MS. TREPEL: But we need to prove the fact that he didn't take the actions to provide the medical care. This is the training where he got some of that -- exactly what he should have been doing at the time.

THE COURT: Counsel, your previous witness conveniently dropped out a word "attempt" on direct examination. That was brought out on cross-examination that the word "attempt" was included in the request to turn the patient on its side.

MS. TREPEL: Your Honor, the full slide, I believe, was put up with all the words, but that was in the duty to intervene, which is not the count that Mr. Lane is charged with, the attempt.

THE COURT: Okay. I'm going to overrule the objection. I'm going to receive Exhibits 92 through 96 as it applies to Officer Lane only, and it has no application to Officers Thao or Kueng.

MR. GRAY: Excuse me, Your Honor. There's one thing here that should be noted. It's not "should have known." It's know, that he knew that this guy was in serious medical needs, and they're going to prove this by 2017 --

THE COURT: That's what she said, "should have known."

MR. GRAY: It's not "should have known." It's "know."

THE COURT: But that's what she said. That's not what you said.

Let's get the jury.

(1:39 p.m.)

IN OPEN COURT

(JURY PRESENT)

THE COURT: You may be seated.

Members of the jury, first of all, we're a little bit late coming in, and you are going to get out early today, I think and hope. The reason for that is one of the witnesses that was scheduled to be here at 1:30 today is ill and not COVID, by the way, but is just not feeling well, and as a result, that witness couldn't get here today.

So instead of having two witnesses this afternoon, there will only be one. And that witness will be coming forward, and with that witness, you need to be aware that this witness's testimony will be only applicable to Officer Lane. It is not applicable in any way, shape or form to Officers Thao or Kueng.

In addition to that, Exhibits 92, 93, 94, 95 and 96 are received in evidence as applicable to Officer Lane, but again those exhibits are not applicable to either Officer Thao or Officer Kueng.

With that, if you'd call your witness, please.

MS. TREPEL: United States calls Christopher Douglas.

THE COURT: Mr. Douglas, if you'd stop there and raise your right hand.

CHRISTOPHER DOUGLAS,

called on behalf of the government, was duly sworn, was examined and testified as follows:

THE COURT: Take the witness stand. Remove your mask. Slide up close to the microphone and give us your name, including spelling of your last name.

THE WITNESS: My name is Chris Douglas, D-o-u-g-l-a-s.

MR. GRAY: Your Honor, could he speak into the mic? I can't hear him.

THE WITNESS: Sorry.

THE COURT: Yeah. That microphone is kind of directional, so you need to pull it down so it looks right straight at your mouth. There we are.

THE WITNESS: My name is Christopher Douglas D-o-u-g-l-a-s.

DIRECT EXAMINATION

BY MS. TREPEL:

Q. Mr. Douglas, where do you work?

A. Currently I work for the Department of Community Corrections and Rehabilitation in Hennepin County.

Q. And what is that department responsible for in terms of the facilities it oversees?

A. We have two facilities. One is preadjudication and one is adjudicated facility for adults.

Q. Okay. When you say preadjudicative, are they --
A. Pretrial. Pretrial, the juvenile institution is a pretrial facility.
Q. So detention centers or jails?
A. Correct.
Q. All right. What is it that you do there?
A. I'm the lead safety trainer for both facilities.
Q. And just to preview why you are here, did you train any of the defendants in this case?
A. I believe I did.
Q. Who was that?
A. Officer Thomas Lane.
Q. Okay. And at the time where was Defendant Lane working?
A. The juvenile detention center.
Q. Can you tell us what you do as the lead safety trainer for the department?
A. Sure. I train all of the new employees that come on board to work at the facilities and then once they are there, I provide refresher training throughout the year, throughout their employment, in restrictive procedures.
Q. Can you tell us what restrictive procedures means?
A. It might also be known as use of force techniques, but restrictive procedures are just a series of soft hand or open hand techniques that we train the officers that work in the facilities to gain control physically of residents when

it's needed.
Q. How long have you held the position of lead safety trainer?
A. I've been with the DOCCR for five years now.
Q. And before that very briefly what did you do?
A. Prior to coming to the DOCCR, I worked at the Hennepin County Sheriff's Office as a detention deputy and a detention sergeant.
Q. And is that like a corrections officer?
A. Correct.
Q. And what type of detainees or inmates did you work with?
A. So there, both pretrial detainees and some were, would return from prisons and other facilities to go to court, so both.
Q. Okay. And those are adults?
A. Yes.
Q. All right. And how long did you work as a detention deputy and sergeant for Hennepin County?
A. 16 years.
Q. Now, what types of trainings do you teach as a lead safety trainer?
A. For the most part, it is, again, the restrictive procedures techniques, how to use your hands to, you know, bring physically under control residents in the facilities who are not under control.

Q. Who is it that you are giving these trainings to?
A. The officers and the supervisors that work there.
Q. And when you say, "The officers and supervisors that work there," do you mean in both facilities, the adult jail facility and the juvenile detention center?
A. That's correct.
Q. And in 2017 and 2018, were both the adult and juvenile detention officers given the same use of force training, or was that different?
A. It's the same.
Q. How long is the use of force training you teach to new juvenile detention officers when they start?
A. Part of their on-boarding really encompasses about 20- to 24-hour training.
Q. And what topics do you cover in that training?
A. We go over things like deescalation techniques. We go over physical restraint techniques. That's pretty much it.
Q. All right. Now, is that restrictive procedures training or use of force training that you provide to new officers or new hires part of a longer training program for new employees?
A. Yes, the on-boarding process I believe is two weeks.
Q. And what type of use of force training do officers get after they are already on-boarded and completed that new employee training?

MR. GRAY: Judge, I object to this. Lack of foundation unless he did the training.

THE COURT: Sustained.

BY MS. TREPEL:

Q. Mr. Douglas, is it Officer Douglas or Mr. Douglas?

A. Mr. Douglas is fine.

Q. Okay. Sorry. Did you actually train Mr. Lane?

A. Yes.

Q. What course did you actually train Mr. Lane in?

A. I've trained -- I know specifically I've trained a refresher class that he would take, four hours in length, that basically covers all of the things that they trained when they came on board.

MR. GRAY: Judge, I object to that. Move the last part be stricken because he didn't do the training when he came on board.

THE COURT: I sustain the latter part of the sentence.

BY MS. TREPEL:

Q. So when you said the four-hour restrictive procedures training, when was that offered in terms of a person's employment? In other words, was that in-service training or training that folks get once they're already on-boarded?

A. They are already on-boarded, and it is in-service training. It's a part of a quarterly refresher training on

those skills.

Q. What was Mr. Lane's position at the time that you trained him?

A. A juvenile corrections officer.

Q. When, if you know, did Defendant Lane begin working as a juvenile correction officer?

A. I don't have the exact date. The -- 2017, I believe?

Q. If I showed you a document, would it refresh your recollection?

A. Sure.

Q. Actually, can we bring up what's been admitted into evidence as Government Exhibit 92, please, page 1?

Is that large enough for you to see?

A. It is.

Q. Okay. What is that document?

A. This appears to be an acceptance letter.

Q. From where?

A. From the DOCCR, from the Department of Community Corrections.

Q. And who is it for?

A. It is for Thomas Lane.

Q. And what's the date on that letter?

A. October 2017.

Q. Does that refresh your recollection at all about when Mr. Lane started?

A. Yes.
Q. All right. And -- all right. I'd like to move now to show you what's been admitted into evidence as Government Exhibit 94.
Do you recognize this document?
A. I mean, it appears to be a training document of, kind of laying out a schedule.
Q. Okay. Do you recognize any courses on there that you typically teach?
MR. GRAY: Judge, object to that. Unless he taught some of these courses to Tom Lane, this is not admissible.
THE COURT: Sustained.
THE WITNESS: There are courses here that I trained, yes.
MS. TREPEL: May I build a foundation, Your Honor?
THE COURT: Sure.
BY MS. TREPEL:
Q. And which course on here do you regularly train?
A. I train the Tria boundaries training. Let me just go through all of these. The restrictive procedures training.
Q. And is that the restrictive procedures training you referred to earlier, like use of force?
A. That's right.
Q. And this is the eight-hour one for new hires?

A. Yes.
Q. Okay. That's a course you regularly teach, correct?
A. Yes.
Q. And then you referred earlier you also would teach a refresher course on that same topic?
A. Yes.
Q. Are you familiar with who taught Mr. Lane on the two days referred to in Government Exhibit 94?
A. I am familiar with the trainers that were handling that day, yes.
Q. And who did provide the training on, on this date on the restrictive procedures training for new employees?
A. It would be my assistant or my direct report, Brandon Halleran, and a facility trainer, Michael Schwartz.
Q. And Mr. Halleran, is he still with your department?
A. He is not.
Q. As someone you supervised, did you observe him training?
A. I have several times, yes.
MR. GRAY: Judge, I object as leading. Move the answer be stricken.
MS. TREPEL: Laying foundation, Your Honor.
THE COURT: Counsel, it is a leading question, and it seems to me that the witness has disqualified himself as it relates to that particular training because it was done by another person.

MS. TREPEL: Yes, Your Honor. I had another question to finish my foundational --

THE COURT: Okay. Then ask the question. I'm sorry.

BY MS. TREPEL:

Q. Just whether you, after observing him teaching, do you cover the same information in that eight-hour restrictive procedures class as your direct report when he teaches it?

A. Absolutely. It's the same across the board.

MR. GRAY: Object. That's lack of foundation. He doesn't know what was covered.

THE COURT: That's right. I sustain.

MS. TREPEL: Okay.

MR. GRAY: Move the answer be stricken.

THE COURT: The answer is stricken.

BY MS. TREPEL:

Q. All right. If we could move to Government Exhibit 95, please. Can you take a look, and if we can enlarge the top there.

Can you tell us generally what this document is and what it shows?

A. Yeah, this appears to be a training record.

Q. Have you seen this before?

A. I have.

Q. And who is it for?

A. For Officer Lane.
Q. Now, if we can move down and find the refresher restrictive training course here, and can we enlarge that?
Okay. Do you see the refresher restrictive training procedures class that you taught?
MR. GRAY: Object to that, Your Honor, unless he taught it. I didn't quite catch if he taught that course.
THE COURT: Well, let's lay that foundation. Did he or didn't he?
THE WITNESS: I did. I did teach this class, yes.
BY MS. TREPEL:
Q. Okay. The four-hour refresher that you've just testified about?
A. That's correct.
Q. Okay. Can you mark on your screen, if you can see it there, where it is.
And we can make that one bigger, perhaps.
A. (Indicating).
Q. It looks like you are moving a cursor around that.
A. That's right.
Q. Okay. That's the one you were moving the cursor around?
A. Yes.
Q. Okay. And can you tell us the topics you covered in this particular class?
A. Sure. In this class we go over physical restraint

techniques to aid the officers in the application of mechanical restraints like handcuffs. We teach takedowns, how to control someone on the ground. We go over various techniques in controlling the legs at one point, if needed the arms, and then getting the person up and --

Q. Can you --

A. -- getting them where they need to go.

Q. Can you tell us how you teach these classes? In other words, practical, classroom component, lecture? What does that look like?

A. Yeah. So we strongly encourage everyone that is in this role to use their words to diffuse situations whenever possible. That's first and foremost. And as they move closer to a situation where physical techniques are needed, those decisions are really driven by, by the resident's behavior.

And so as they, the situation escalates, then they would be required to recognize the behavior and apply the correct level of force needed to bring the situation under control. Our main goal, whenever possible, is to keep somebody in a vertical position on their feet.

We train this because being on your feet, everyone being on their feet, we have a less likelihood of sustaining any injuries and, and it just makes it easier for transport once they are under control or in restraints.

Q. And how are you conveying that information? In other words, are you -- is this a discussion or lecture class? Are you actually doing the techniques that you are talking about on mats? How does that work?

A. Yeah. So we'll have, we'll have mats. And typically how the training goes is, we have this discussion. We explain what we expect as a department, and then myself or a co-trainer will demonstrate and then provide time and space for those attending to show us the skill and move forward.

Q. Okay. Are you familiar with the term "positional asphyxia"?

A. I am.

Q. Is that a concept that you cover in your restrictive procedures training?

A. Yes. This is a concept that -- it's not specifically a block of training that we spend moments on separate to restrictive procedures training. It's a concept that is introduced early on and revisited throughout every single training that we teach when we do physical training.

Q. Can you explain how it's conveyed in this restrictive training class?

A. Sure. So the moment that an officer would then put their hands on someone, that person's physical ability to move freely is restricted, and depending on the level of force needed or restraint needed, this can, we can find

ourselves in situations where a resident could have a difficult time breathing.

And so what we're doing is constantly reiterating a person's position with relation to how they are restrained, where the officers are. And the goal is to, in these moments, restrain as quickly as possible, to get the resident into a recovery position so that they can successfully breathe.

Q. And so when does that come up in terms of the tactics that you are practicing in this class?

A. The moment we are --

MR. GRAY: Judge, I object to him saying "we." He's testifying as to what he did, and if somebody else has done it and he doesn't know about it, it's not fair to my client.

THE COURT: I sustain that.

Try to confine it to your own personal experience.

THE WITNESS: Yes, Your Honor.

What I train is, the moment that a person or an officer would be applying restraints or using these types of restrictive procedures, this is when you should be thinking about that very thing.

We know, I know, history tells us that if a situation goes on too long, the likelihood increases for the officers and the resident or the subject to be on the

ground, the level of restraint to be higher. So the goal is to restrain quickly, assess and move forward based on the resident's behavior.

BY MS. TREPEL:

Q. And what does that mean? To move forward after you've restrained quickly, what does that look like?

A. Well, there's always a point B place. Someone is restrained, and we don't just walk away. They're restrained and escorted to another place. That could be their cell. It could be another housing location. There is more to it once the restraints are applied.

Q. And do you train officers about prone handcuffing during this class?

A. Yes. I've trained officers how to apply handcuffs in a standing position, a kneeling position and if necessary a prone position.

Q. What do you train officers to do once they secure a person in the prone position to handcuff them?

A. It's always the practice for every person that gets trained in --

MR. GRAY: Object to this as not responsive. He's asked what he does, not always a practice, Your Honor.

THE COURT: Go ahead and tell them what you do.

THE WITNESS: I train every person once handcuffs are applied in the prone position, our goal, the goal should

be to roll a person onto their side or into a seated position so that they may breathe, expand their lungs and breathe.

BY MS. TREPEL:

Q. And what is the recovery position?

A. Typically is on the side, on their side with their knees brought up close to their chest.

Q. And why do you train officers to place a person in the prone -- sorry -- in the recovery position after they've been handcuffed in the prone position?

A. Because I understand that this allows for a person in that position to breathe better, more effectively.

Q. How long do you train officers to keep people in the prone position before moving them?

A. As soon as it's safe for everyone involved to get the person rolled into that position, that's when they should be doing it.

Q. Why is that?

A. Well, there are factors, environmental factors. There could be, just having handcuffs on in a prone position doesn't necessarily mean that the struggle is over. So we don't want to have to lose any ground and then struggle to gain it back.

So as soon as it's safe for everyone involved to get that person rolled onto their side, that's when we

suggest that they do it.

Q. So when the struggle is over, is that what you train?

A. Whether it is --

MR. GRAY: Object to that as leading, Your Honor.

THE COURT: We are, but I'll let it stand.

BY MS. TREPEL:

Q. What, if any, techniques do you train officers involving holding a knee across somebody's neck?

MR. GRAY: Object to that, Your Honor. It's not relevant to my client. He's not accused of doing that.

MS. TREPEL: It goes to his familiarity with techniques.

THE COURT: Yeah. I sustain that objection.

BY MS. TREPEL:

Q. Are you familiar with the idea of in your custody is in your care?

A. Yes.

Q. What does that mean?

A. One of the things that I teach, words that I use specifically are, the moment that you put or apply restraints to a resident, you are responsible for their safety.

Q. Why is that important to teach?

A. It's important to make it very clear that if someone's hands are restrained behind their back, they're unable to

protect themselves should they fall or should something, you know, fall towards them. A natural reaction would be to bring your hands up and protect vital parts of your body.

And the inability to do that because of mechanical restraints being applied, whoever applies them, you are now in charge of their safety until they come off.

Q. And what, if anything, do you train officers in this class about who decides when and how much force to use during an encounter with a person?

A. I'm always purposeful when I explain to those who attend my class, they, the officer, are not the people who decide when and how much force is used. That decision is solely arrived at by the behavior of the resident that they're managing.

Q. Can you explain what that looks like in practice?

A. The officers are in positions where they have to enforce rules and regulations inside a facility. They are there to manage those that are under our care, custody and control. And at times words are not enough. A physical action may be needed.

I teach that we always use the least amount of force necessary to achieve that goal. Ultimately the question is followed up or presented to me, well, when do I know to do more, how do I know when.

MR. GRAY: Judge, I object to this as narrative

and totally not relevant to this case.

THE COURT: It is narrative, and so I suggest that we ask another question.

BY MS. TREPEL:

Q. So how is it that you -- well, strike that.

What, if anything, do you teach officers to do when -- to inmates or detainees are fighting with one another, in this class?

A. Again, the ultimate goal --

MR. GRAY: Excuse me, Your Honor. I object to this. There is no evidence in this case that detainees were fighting with each other, and I believe that's what she asked.

THE COURT: I don't think that's relevant. I sustain the objection.

BY MS. TREPEL:

Q. In a custodial setting --

All right. I'd like to turn back to this Exhibit 94 here. There's some positional asphyxia trainings that officers in the Department of Community Corrections are required to take annually?

A. That's right.

Q. Have you taken those classes?

A. I have.

Q. Do you see those classes here?

A. I do.
Q. Are those online or in-person classes?
A. They are online or E learnings.
Q. Are you familiar with the content of those classes?
A. I am.
Q. Did Officer Lane take those classes, as reflected on this transcript?
A. Yes.
Q. How many times?
A. Looks like twice.
Q. Okay. And what years were those?
A. In 2017 and 2018.
Q. All right. And how long is that class?
A. I believe it's an hour long training.
Q. I'd like to go to Government Exhibit 96, please, which is in evidence.

All right. Now taking a look at this document, and we'll zoom in when necessary, but just pig picture, what is this document?
A. This appears to be a Word document, a printout of the E learning that the officers take.
Q. And that's the positional asphyxia training you've just referred to?
A. Yes.
Q. All right. I'd like to go to page 5 of this exhibit,

slide 1.10, and blow that up.

All right. What does this slide say about how to avoid positional asphyxia?

A. I'll read it. Get control of the subject quickly. If restraint is necessary, have a plan and get control of the subject quickly. Try to use arm bars as opposed to resorting to body weight to hold the subject down. Avoid putting pressure on the subject's torso or neck, if possible.

Q. And go to page 6, please, and slide 1.11.

What does this slide teach about how to avoid positional asphyxia?

A. It says, This should be done right away. The best position will be either lying on their side in a recovery position or up in a seated position. And then there's artwork that depicts that.

Q. And what does it say above the blue box there?

A. I'm sorry?

Q. Would you read the sentence above the blue box for me?

A. Once restraints are applied, position the subject in a position that doesn't restrict breathing.

Q. All right. And if we can go to 1.12 on the same page 6.

What does this slide teach about how to avoid positional asphyxia?

A. Monitor for any medical issues. Ask the subject if they

have used drugs recently or if they have any cardiac or respiratory issues. This should be happening during the restraint also. Once the person is controlled and in the position that allows them to breathe, they should still be monitored for medical issues.

Q. And if we can go to page 7, slide 1.13.

What does this slide teach are the signs of positional asphyxia?

A. This appears to be like a check on learning throughout the E learning. So here we are. The slide says to click on examples to review signs. Then review all to continue.

And do you want me to read right down the list if you would like? The person states he or she can't breathe. Gurgling or gasping sound indicating a --

MR. GRAY: I object to the rest of this. There's no evidence in this case there was gurgling sounds.

THE COURT: Yeah, I sustain.

MR. GRAY: Ask that be taken off, the exhibit.

THE COURT: The exhibit is in evidence.

BY MS. TREPEL:

Q. You can go to the next slide.

A. Lips --

Q. No.

A. I'm sorry.

Q. Let's move to the next slide. Go to page 9 and 10, go

side-by-side there for the quiz at the bottom.

If you could highlight -- can you actually highlight, Mr. Fronk, put up 9 and 10 next to each other for me? Thank you. And if you can highlight just that black and white box at the bottom of nine and the top of ten. Okay.

So what is this we're looking at here?

A. It appears to be an answer, a choice, and it reads: A person's body weight has no bearing on whether it is hard for them to breathe.

Q. Okay. And is that continued on the next page?

A. Would you like me to read all of them?

Q. Well, why don't you read the correct answer to this quiz question?

A. Sure. Once a subject is restrained, he should quickly be switched from the prone position to a position that allows him or her to breathe more freely.

Q. So that's the correct answer to this quiz?

A. Correct.

Q. And it's marked there with an X?

A. I'm sorry. I didn't --

Q. I was just asking if that's what the X meant.

A. Yes.

Q. Okay. And why is this quiz included in the training?

A. Again, it's a check on learning. At the end of the

training, the goal here is that someone who is taking it has received and understands the information that's been presented to them throughout.

Q. Okay. Now on the slide we were looking at earlier with the various signs of positional asphyxia, was the training teaching that a person has to be experiencing all of those signs and symptoms or just one or more of them to be experiencing positional asphyxia or at risk?

MR. GRAY: Judge, I object. This is an opinion of the witness, his lack of foundation. It's just --

THE COURT: Yeah. I sustain the objection.

BY MS. TREPEL:

Q. I'd like to go to page 18 of this exhibit and 3.5.

What does this slide say about the sudden lack of resistance?

MR. GRAY: Judge, it's repetitious. We've gone over this. It's an online training. He wasn't even there, Your Honor. How can we get into this? There's just no foundation for this.

MS. TREPEL: There's no --

THE COURT: I'll let this be answered.

THE WITNESS: Would you like me to read?

MS. TREPEL: Yes.

THE WITNESS: The sudden lack of resistance may come as a relief to staff who assume the subject has

succumbed to the restraint. However, that relief will turn into dismay if staff find out that the person has stopped responding.

It is critical that when a subject all of a sudden becomes quiet and still that staff check for responsiveness and vital signs.

The transition from restraint to medical assistance must be quickly -- or must be quick. Staff should provide first aid and request medical assistance right away.

BY MS. TREPEL:

Q. In your restrictive procedures course that you teach, what do you train officers about if a person says they can't breathe?

MR. GRAY: Judge, I object to this as repetitious and also he didn't train on that.

THE COURT: I'm going to overrule.

Answer.

THE WITNESS: What is it that I teach if someone says that they can't breathe?

BY MS. TREPEL:

Q. Right.

A. Immediately then what we should, what an officer should do is to assess their physical position in relation to the resident or the subject and then after that assessment make

proper adjustments.

Q. In your course do you train officers that if a person is talking they must be breathing?

A. Negative. I never train that. That's not true.

MR. GRAY: Move the last part of that be stricken, "that's not true." That's a judgment of his. It's certainly not evidence in this case.

THE COURT: I sustain that.

BY MS. TREPEL:

Q. Why do you train officers that?

A. We know --

MR. GRAY: Object to that. Lack of foundation. He doesn't know that, Your Honor.

THE COURT: That's overruled.

You may answer.

THE WITNESS: I understand that simply speaking does not mean that you are taking a full cleansing breath. You don't need that much to speak.

MS. TREPEL: One moment, please.

I have no further questions on direct.

THE COURT: Thank you.

Mr. Gray.

MR. GRAY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GRAY:

Q. Mr. Douglas, is it?

A. Yes, sir.

Q. Mr. Douglas, are you still with the juvenile center?

A. I'm with the Department of Community Corrections, so --

Q. What does that mean?

A. I work for the Department of Community Corrections Rehabilitation. The Juvenile Justice Center is part of that organization.

Q. Okay. And are you with the Juvenile Justice Center?

A. No, I do not work there.

Q. And what you are testifying to, basically, is when somebody's in the prone position, you should roll them over to the recovery position after they've calmed down, let's put it that way; is that right?

A. As quickly as possible.

Q. Right. And if the person is still resisting, fighting, you can't put them in the recovery position until then, correct?

A. That's correct.

Q. And if somebody is fighting and you handcuff them and you have them in the prone position and once he calms down, you say shall we roll him over on his side, right?

A. Absolutely.

Q. That's what you should do, right?
A. Absolutely.
Q. And in addition to that, if you are wondering if the person is acting bizarre, unreasonable, you want to find out if he's on drugs, correct?
A. Yes.
Q. And if the officer asks the arrestee or in your case a detainee, a juvenile, you ask them are you on drugs, did you take any drugs, correct?
A. Yes. Yes. That would be assessing the situation as it's unfolding, yes.
Q. And if somebody is in need of medical services, you call an ambulance, correct?
A. That's correct.
Q. And have you checked Mr. Lane's record at the juvenile corrections division?
A. His record?
Q. Yeah. Did he have any unreasonable use of force allegations while he was there for a year and a half?
A. I can't speak to that. I don't know.
Q. You don't know? Didn't you check that when you were asked to come here to testify?
A. No.
Q. No? And what he did as a correction officer, if you know, and if you don't know, I mean, you seem to know what's

on that chart. If you know, did Mr. Lane have any -- strike that.

Who was he a correction officer for? Do you know that?

A. I believe he was a correctional officer for the juvenile detention center.

Q. And that would be for the juvenile delinquents that are in that detention center, correct?

A. Correct.

Q. And at times that's quite a difficult job. Fair statement?

A. Absolutely.

Q. Because these juveniles are in there, and juveniles in our system of justice now get many chances before they're locked up, correct?

A. Yes.

Q. And, by the way, with respect to this correctional, juvenile correctional institution, this isn't the military thing where people are called lieutenants, sergeants, things of that nature; is that right?

A. It's not a paramilitary organization.

Q. Not paramilitary at all. And you also apparently in an online lecture or some kind of lecture dealt with delirium, right?

A. I'm familiar with the term.

Q. What is it? Excited delirium, what is that?
A. It's, so it's -- my understanding is really quite limited. I understand that it is an effect of high levels of dopamine in a person's brain.
Q. Have you ever seen any of that in the juvenile center?
A. I have not seen it in the juvenile center, no.
Q. Are you a -- were you at some point in time a corrections officer in the juvenile center?
A. Not at the juvenile center, no. At the public safety facility for adults.
Q. And that would be for adults?
A. Yes.

MR. GRAY: That's all I have, Your Honor. Thank you.

THE COURT: Thank you.

Ms. Trepel, anything further?

MS. TREPEL: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. TREPEL:

Q. Mr. Gray was just asking you if someone is in need of medical services, you said you call an ambulance?
A. Yes.
Q. What if anything else do you do depending on the situation?
A. Depending on the severity of the situation, in the

moment, apply or aid in any way that I can or at the level that one can.

Q. And why is that?

A. Well, we're all about the preservation of life.

Q. And so why isn't it enough to just wait for the ambulance?

A. Well, if I'm -- if I understand the situation for what it is and I can respond, then that's part of my duty as an officer, to provide that safety and security, right.

Q. Why is that part of your duty as an officer?

MR. GRAY: Object to that, Your Honor. Lack of -- it's not relevant.

THE COURT: It's overruled.

MS. TREPEL: You can answer.

THE WITNESS: If you are a public safety officer, that's your goal, that's your job, is to provide safety and security, public safety. And that should include any medical aid if you are able to render it.

MS. TREPEL: Thank you. No further questions.

MR. GRAY: I have no further questions, Your Honor.

THE COURT: Okay. Thank you very much. You may step down.

And I take it, counsel, we have no other witnesses this afternoon?

MS. BELL: That is correct, Your Honor.

THE COURT: Okay. Members of the jury, I'm sorry about this, but it happens. We are going to have to be in recess for the day. I don't know. Maybe you can go shopping. I don't know.

Anyway, the long and short is don't read and listen to any media accounts. Don't carry out any personal investigations. Don't pay any attention to the internet or any of those things, and have a good, early evening through the evening. And we'll be back at 9:30 tomorrow morning, and we'll have witnesses for you.

We are in recess.

IN OPEN COURT

(JURY NOT PRESENT)

THE COURT: Counsel, I stayed on. A couple of things I want to talk to you about. One is, it has just come to my attention, and I had no idea of this, and that is that when third parties are ordering transcripts of our proceedings, they not only getting transcripts of what's said publicly, but they're also getting in that, the transcript, the sidebar conferences that occur.

I guess I don't care, but if you do, you're going to have to make a specific point of it for me to deal with that because that is -- that really is not part of the proceeding that the jury is deciding. Anyway, that's that.

Second thing is, I understand the defendants have turned in -- the government has not turned in the copies of the questionnaires of these many, many questionnaires that were sent out. I understand you're keeping the copies of those people that are actually seated as jurors here, but the others, please turn those in so that we can get them properly sealed and accounted for in retention.

MS. BELL: Sure. I didn't know if the court wanted us to shred them ourselves or bring them back.

THE COURT: No. I think we should be in charge of shredding.

MS. BELL: Very good.

THE COURT: That's the first time you ever heard me volunteer to do something.

Okay. We'll stand in recess until tomorrow at 9:30.

(Court adjourned at 2:25 p.m., 02-01-2022.)

* * *

I, Renee A. Rogge, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: /s/Renee A. Rogge
Renee A. Rogge, RMR-CRR